KEY TO BRIEFS

1 JURISDICTIONAL STSTEMENT

2 MOTION TO AFFIRM

3 APPELLANTS' BRIEF IN OPPOSITION TO APPELLEES' MOTION TO AFFIRM.

4 BRIEF OF APPELLANTS PRESENTING LATE AUTHORITY UNDER THIS COURT'S RULE 41, PAR. 5.

5 BRIEF FOR APPELLANTS

6 BRIEF FOR APPELLEES

7 REPLY BRIEF FOR APPELLANTS

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1957.

No. 1060

JOSEPH D. BIBB, Director of the Department of Public Safety of the State of Illinois, and WILLIAM H. MORRIS, Superintendent of the Division of State Highway Police, Department of Public Safety of the State of Illinois,

Appellants,

vs.

NAVAJO FREIGHT LINES, INC., a New Mexico corporation, RINGSBY TRUCK LINES, INC., a Nebraska corporation, PRUCKA TRANSPORTATION, INC., a Nebraska corporation, DENVER CHICAGO TRUCKING CO., INC., a Nebraska corporation, WATSON BROS. TRANSPORTATION CO., INC., a Nebraska corporation, PACIFIC INTERMOUNTAIN EXPRESS CO., a Nevada corporation, ARKANSAS BEST FREIGHT SYSTEM, INC., an Arkansas corporation, and SCHERER FREIGHT LINES, INC., an Illinois corporation,

Appellees.

(APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION.)

JURISDICTIONAL STATEMENT.

Certificate of Service Appended at Page 25.

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INDEX.

CASES AND STATUTES CITED.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1957.

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JOSEPH D. BIBB, Director of the Department of Public Safety of the State of Illinois, and WILLIAM H. MORRIS, Superintendent of the Division of State Highway Police, Department of Public Safety of the State of Illinois,

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Appellees.

JURISDICTIONAL STATEMENT.

Reference to the Official and Unofficial Reports of the Opinions Delivered in the Courts Below.

The opinion of the court below has not yet been reported. It is reprinted in full as Appendix I in this Statement (App., pp. 1-15) and appears in the record at pages 538 to 555 inclusive.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOLVED.

The Nature of the Proceedings and the Statute Pursuant to Which It Is Brought.

This is appellees' suit for a declaratory judgment that Section 121.02 of Illinois' Uniform Act Regulating Traffic on Highways (Ill. Rev. Stats. 1957, Ch. 95½, Par. 218 (b), Vol. II, p. 724, reprinted in full, *post*), which requires contour splash fenders or splash guards over and behind the rear wheels of certain motor trucks and trailers operating in Illinois in both intrastate and interstate commerce, unreasonably burdens interstate commerce and for injunction restraining the enforcement of that Act.

The suit is brought pursuant to Sections 2201, 2281 and 2284 of the Judicial Code (28 U. S. C. Sec. 2201, 62 Stat. p. 964, amended 63 Stat. 105, 28 U. S. C. Sec. 2281, 62 Stat. p. 968, 28 U. S. C. Sec. 2284, 62 Stat. p. 968).

A three-judge district court declared the Act unconstitutional as a burden on interstate commerce and enjoined its enforcement. The court's judgment is reprinted as Appendix III to this Statement. (App., pp. 23-24.)

The Date of the Judgment Sought To Be Reviewed, The Time of Its Entry, the Date the Notice of Appeal was Filed and The Court In Which It Was Filed.

The decree was dated March 10, 1958, and was entered March 19, 1958. (Rec. 563.)

The notice of appeal was filed on May 8, 1958 in the U. S. District Court for the Southern District of Illinois, Southern Division. (Rec. 564-569.)

The Statutory Provision Conferring on This Court Jurisdiction of This Appeal.

This appeal is taken pursuant to Section 1253 of the Judicial Code (28 U. S. C. Sec. 1253, Act of June 25, 1945, C. 646, 62 Stats. 926), which authorizes direct appeals to this Court from judgments of injunction by three-judge district courts.

Cases Believed to Sustain the Jurisdiction of This Court.

The cases believed to sustain the jurisdiction of this Court are:

Maurer v. *Hamilton*, 309 U. S. 598, 603.
South Carolina Highway Dept. v. *Barnwell Bros.*, 303 U. S. 177, 190, 191.
Sproles v. *Binford*, 286 U. S. 374.

The Text and Citation of the Statute Involved.

The validity of the following statutory provisions of the State of Illinois is involved:

218b. Rear fender splash guards.] § 121.02. It is unlawful for any person to operate any motor vehicle of the second division upon the highways of this state outside the corporate limits of a city, village or incorporated town unless such vehicle is equipped with rear fender splash guards which shall comply with the specifications hereinafter provided in this Section; except that any motor vehicle of the second division which is or has been purchased, new or used, prior to August

1, 1957 shall be equipped with rear fender splash guards which are so attached as to prevent the splashing of mud or water upon the windshield of other motor vehicles and such splash guards on such vehicle shall not be required to comply with the specifications hereinafter provided in this Section until January 1, 1958.

The rear fender splash guards shall contour the wheel in such a manner that the relationship of the inside surface of any such splash guard to the tread surface of the tire or wheel shall be relatively parallel, both laterally and across the wheel, at least throughout the top 90 degrees of the rear 180 degrees of the wheel surface; provided however, on vehicles which have a clearance of less than 5 inches between the top of the tire or wheel and that part of the body of the vehicle directly above the tire or wheel when the vehicle is loaded to maximum legal capacity, the curved portion of the splash guard need only extend from a point directly behind the center of the rear axle and to the rear of the wheel surface upwards to within at least 2 inches of the bottom line of the body when the vehicle is loaded to maximum legal capacity. On all vehicles to which this Section applies, there shall be a downward extension of the curved surface which shall end not more than 10 inches from the ground when the vehicle is loaded to maximum legal capacity. This downward extension shall be part of the curved surface or attached directly to said curved surface, but it need not contour the wheel.

The splash guards shall be wide enough to cover the full tread or treads of the tires being protected and shall be installed not more than 6 inches from the tread surface of the tire or wheel when the vehicle is loaded

to maximum legal capacity. The splash guard shall have a lip or flange on its outside edge to minimize side throw and splash. The lip or flange shall extend toward the center of the wheel, and shall be perpendicular to and extend not less than 2 inches below the inside or bottom surface line or plane of the guard.

The splash guards may be constructed of a rigid or flexible material, but shall be attached in such a manner that, regardless of movement, either by the splash guards or the vehicle, the splash guards will retain their general parallel relationship to the tread surface of the tire or wheel under all ordinary operating conditions.

This Section shall not apply to motor vehicles whose construction or design does not require such splash guards, nor to motor vehicles in-transit and capable only of using temporary splash guards approved by the Illinois State Highway Police.

This Section shall not apply to motor vehicles which do not have more than 2 axles and which are used primarily in agricultural pursuits, nor to pole trailers, dump trucks, "ready-mix" type of cement trucks, nor to trucks used primarily for transporting grain which are dumped or unloaded by use of hoists or lifts, nor to vehicles operated principally off the highways of this state and used primarily in public construction or for purposes associated with or in aid of drilling, mining or otherwise severing of natural resources from their natural depository nor to motor vehicles operated principally within the corporate limits of a city, village or incorporated town or within a short radius thereof; provided, the Department of Public Safety may, in order to promote greater safety on the highways of this State and accomplish the purposes

of this Section, adopt and promulgate reasonable rules and regulations establishing specifications or designs for splash guards, other than the contour type of splash guard hereinbefore specified, to be used on the vehicles mentioned in this paragraph while said vehicles are operated on the highways of this State. In adopting or promulgating any such rules or regulations, the Department of Public Safety shall consider, among other things, the type of vehicle, the design or construction of the vehicle, the purpose or purposes for which the vehicle is used, the conditions or circumstances under which the vehicle operates and the distance the vehicle travels upon the highways of this State. As amended by act approved July 8, 1957. L. 1957, p. 1951, H.B. No. 157.

Section added: L. 1951, p. 942.

THE QUESTIONS PRESENTED BY THIS APPEAL.

A. Does Section 121.02 of Illinois' Uniform Act regulating traffic on Highways (Ill. Revised Stats. 1957, Chap. 95½, Par. 218b, Vol. II, p. 724), requiring contact splash fenders or splash guards over and behind the rear wheels of certain motor trucks and trailers, unreasonably burden interstate commerce in violation of Article I, Section 8, of the Constitution of the United States, which provides as follows:

> "The Congress shall have power . . . to regulate commerce among the several States. . . ."

and Article IV, Clause 2, of the Constitution of the United States, which provides as follows:

> "This Constitution . . . shall be the supreme Law of the Land; and the judges in every State shall be bound

thereby, and anything in the Constitution or Laws of any State to the contrary notwithstanding."?

B. Is the Act within the police power of the State of Illinois reserved to the States under the provisions of the Tenth Amendment to the Constitution of the United States?

STATEMENT OF THE CASE.

Appellees, corporations operating trucks with trailers in interstate commerce and in Illinois under certificates of public convenience and necessity issued by the Interstate Commerce Commission, filed this suit to restrain the enforcement of an Illinois statute enacted in 1957 which requires "contour" mud guards on trucks and trailers in Illinois. (Ill. Rev. Stat. 1957, Ch. 95½, Par. 218b, Vol. 2, p. 724, reprinted in full, *ante*, pp. 3-6.) The specifications required by the statute set forth in its text are thus summarized by the District Court:

> "The Act under attack, entitled 'rear fender splash guards', provides:
>
> > 'It is unlawful for any person to operate any motor vehicle * * * upon the highways of this state * * * unless such vehicle is equipped with rear fender splash guards which shall comply with the specifications hereinafter provided in this Section * * *'.
>
> "The specifications require that the splash guards (1) contour under the wheel; (2) cover the top 90° of the rear 180° (excepting vehicles of less than five inches clearance, and requiring that they contour within ten inches of the body); (3) extend downward to within

ten inches of the ground; (4) have a lip or flange of two inches upon the outside edge, and (5) retain its general parallel condition under all operating conditions when mounted as required by the statute not more than six inches from the tread when fully loaded." (*Opinion*, Appendix I, p. 2.)

A three-judge District Court, having granted a temporary injunction restraining the enforcement of the statute, made that injunction permanent by final decree. The Court's memorandum of opinion (Rec. 538) appears as Appendix I to this Statement (App., pp. 1-16, *post*). That Court's Findings of Fact and Conclusions of Law (Rec. 556-561) appear as Appendix II (App., pp. 17-22). The decree appealed from (Rec. 562) appears as Appendix III (App., pp. 23-24).

In substance, the District Court found that compliance with the Act for vehicles used by appellees would cost each of them in excess of $3,000, that the Arkansas Public Service Commission has issued an order requiring that all vehicles using Arkansas highways be equipped with flat, apron type mudguards parallel to the rear axle, that it is impossible for a splash guard to comply with the Illinois Splash Guard Act and the Arkansas Public Service Commission order, that splash guards permitted in forty-five states are illegal in Illinois, that each of appellees interchanges trailers with carriers throughout the United States, that it will be impractical and in some cases impossible for plaintiffs to equip trailers with the splash guards required by Illinois and that the Act unreasonably burdens interstate commerce (Findings of Fact, App. II, App.).

The District Court also found that if the contour type mud guards become detached from the vehicle upon which they are mounted, they create a hazard upon public highways (Rec. 559).

The District Court therefore found the Act an unreasonable burden on interstate commerce (Rec. 555).

The evidence for appellants, not summarized in the Court's opinion or reflected in its Findings of Fact, is that a plastic contour splash guard when backed into an object such as a loading ramp or post (Rec. 304) snaps back into position and is not damaged. Even when a plastic contour splash guard was subjected to ten times the vibration that you would get on the road, it was not damaged (Rec. 308).

A contour splash guard, unlike a "flat" or "apron" type mud guard, will throw debris down instead of straight out (Rec. 322). When one is driving behind a unit that has inadequate splash guards, mud and water is thrown all over the windshield of a following vehicle with momentary loss of vision. When one loses vision he drops the left side of his car off the paved area of the road and many accidents are caused by trying to right the car from such rolling (Rec. 325).

Contour splash guards prevent mud and water from splashing upon and obstructing stop and flicker lights and license plates (Rec. 340).

They can be installed for about $10 a set (Rec. 341). When the front vehicle is equipped with contour guards, a

vehicle following can drive within twenty or thirty feet of the unit with no trouble in keeping the windshield clean (Rec. 354).

A Captain of the Illinois State Highway Police testified that no accidents had been caused by contour splash guards (Rec. 356).

GROUNDS UPON WHICH IT IS CONTENDED THAT THE FEDERAL QUESTIONS ARE SUBSTANTIAL AND THAT THE DISTRICT COURT ABUSED ITS DISCRETION IN GRANTING THE INJUNCTION.

The District Court has stricken down a measure enacted by Illinois for the prevention of accidents upon that State's highways. It has substituted its judgment for that of the Illinois legislature as to the type of mud guard ~~plaintiffs~~ adapted to prevent collision and other accidents upon the roads of Illinois.

In *South Carolina Highway Department v. Barnwell Bros., Inc.*, 303 U. S. 161, this Court, overturning the decision of a three-judge district court, held valid the provisions of a South Carolina statute prohibiting the "use on state highways of motor trucks and 'semi-trailer motor trucks' whose width exceeds ninety inches, and whose weight including load exceeds twenty thousand pounds."

The Court said at page 189:

> "The nature of the authority of the state over its own highways has often been pointed out by this Court. It may not, under the guise of regulation,

discriminate against interstate commerce. But 'In the absence of national legislation especially covering the subject of interstate commerce, the State may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens.' *Morris* v. *Duby*, 274 U. S. 135, 143. This formulation has been repeatedly affirmed, *Clark* v. *Poor*, 274 U. S. 554, 557; *Sprout* v. *South Bend*, 277 U. S. 163, 169; *Sproles* v. *Binford*, 286 U. S. 374, 389, 390; cf. *Morf* v. *Bingaman*, 298 U. S. 407, and never disapproved. This Court has often sustained the exercise of that power although it has burdened or impeded interstate commerce. It has upheld weight limitations lower than those presently imposed, applied alike to motor traffic moving interstate and intrastate. *Morris* v. *Duby*, *supra*; *Sproles* v. *Binford*, *supra*. Restrictions favoring passenger traffic over the carriage of interstate merchandise by truck have been similarly sustained, *Sproles* v. *Binford*, *supra*; *Bradley* v. *Public Utilities Comm'n*, 289 U. S. 92, as has the exaction of a reasonable fee for the use of the highways. *Hendrick* v. *Maryland*, 235 U. S. 610; *Kane* v. *New Jersey*, 242 U. S. 160; *Interstate Busses Corp.* v. *Blodgett*, 276 U. S. 245; *Morf* v. *Bingaman*, *supra*; cf. *Ingels* v. *Morf*, 300 U. S. 290."

In *Maurer* v. *Hamilton*, 309 U. S. 598, this Court sustained as to trucks traveling in interstate commerce a statute of Pennsylvania "prohibiting the operation over its highways of any motor vehicle carrying any other vehicle over the head of the operator of such carrier vehicle." The Court

sustained this statute notwithstanding the Motor Carrier Act of 1935.

The Court said at pages 603-04:

> "Only a word need be said of the constitutional objections. The present record lays a firm foundation for the exercise of state regulatory power, unless the state has been deprived of that power by Congressional action authorizing the Commission to substitute its judgment for that of the state legislature as to the need and propriety of the state regulation. The nature and extent of the state power, in the absence of Congressional action, to regulate the use of its highways by vehicles engaged in interstate commerce has so recently been considered by this Court that it is unnecessary to review the authorities now, or to restate the standards which define the state power to prescribe regulations adapted to promote safety upon its highways and to insure their conservation and convenient use by the public. See *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177. Judged by these standards we can find no basis for saying that the Pennsylvania statute is not such a regulation or that it is a denial of due process or that it infringes the commerce clause if Congress has not authorized the Interstate Commerce Commission to promulgate a conflicting rule."

In *Sproles* v. *Binford*, 286 U. S. 374, this Court sustained as to trucks traveling in interstate commerce provisions of the Motor Vehicle Act of Texas prohibiting "the operation on any highway of 'any vehicle' as defined, exceeding stated limitations of size, or any vehicle not constructed or equipped as required, and also the transportation of

any load exceeding the dimensions and weights prescribed."

After holding that the Act did not deprive appellants of their property without due process of law (no question of due process is raised in the instant case), the Court, speaking through Chief Justice Hughes, said at pages 389-90:

> "The objection to the prescribed limitation as repugnant to the commerce clause is also without merit. The Court, in *Morris* v. *Duby, supra*, at p. 143, answered a similar objection to the limitation of weight by the following statement, which is applicable here: 'An examination of the acts of Congress discloses no provision, express or implied, by which there is withheld from the State its ordinary police power to conserve the highways in the interest of the public and to prescribe such reasonable regulations for their use as may be wise to prevent injury and damage to them. In the absence of national legislation especially covering the subject of interstate commerce, the State may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens.' In the instant case, there is no discrimination against interstate commerce and the regulations adopted by the State, assuming them to be otherwise valid, fall within the established principle that in matters admitting of diversity of treatment, according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act."

We need not multiply citations for the proposition, enunciated in the three cases cited above, that a State may

adopt reasonable regulations as to the equipment to be used on its highways and such regulations may extend to vehicles traveling in interstate as well as intrastate commerce.

The evidence for appellants showed *without contradiction* that contour mudguards, *unlike flat or apron type mudguards*, will throw debris downward instead of laterally, that they will prevent the obscuring of rear lights and license plates and that when a vehicle is equipped with contour guards, a vehicle following can drive within twenty or thirty feet of the forward vehicle "with no trouble in keeping windshield clean." (Rec. 354.)

The appellants' evidence showed *without contradiction* that when one is driving behind a unit that has inadequate splash guards, mud and water is thrown all over the windshield of the vehicle following with loss of vision and that many accidents, both to single vehicles which go off the road and involving collisions, as a result of this loss of vision. (Rec. 324.)

The question propounded is one of legislative, not judicial, discretion.

Only a word need be said as to the Arkansas regulation, which requires a flap type of mudguard. The evidence shows that with a few possible exceptions, it is possible to change mudguards in interstate transit. (Rec. 113.) While some delay will be occasioned by this change of mudguards, delay is a small price to pay for minimization of accidents upon the public highway.

These considerations demonstrate that the statute is a reasonable exercise of the State's police power, that the district court has departed from the constitutional norms apposite to the questions presented, that it has made a legislative, not a judicial demonstration of those questions and that it has improperly granted the injunction appealed from.

Respectfully submitted.

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APPENDIX I.

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
SOUTHERN DIVISION

Navajo Freight Lines, Inc.,
a New Mexico corporation,
Ringsby Truck Lines, Inc.,
a Nebraska corporation,
Prucka Transportation, Inc.,
a Nebraska corporation,
Denver Chicago Trucking Co., Inc.,
a Nebraska corporation,
Watson Bros. Transportation Co., Inc.,
a Nebraska corporation and
Pacific Intermountain Express Co.,
a Nevada corporation,
Plaintiffs,

and

Arkansas-Best Freight System, Inc.,
an Arkansas corporation,
Intervenor,

vs.

Joseph D. Bibb, Director of the Department of Public Safety of the State of Illinois,

and

William H. Morris, Superintendent of the Division of State Highway Police, Department of Public Safety of the State of Illinois,
Defendants.

Civil Action
No. 2438
For Declaratory
Judgment and
Injunctive
Relief

February 26, 1958

Before MAJOR, Circuit Judge, BRIGGLE and MERCER, District Judges.

MAJOR, Circuit Judge. Plaintiffs instituted this proceeding, praying for a declaratory judgment that Sec. 121.02

of the Uniform Act Regulating Traffic on Highways, being Sec. 218b of Chap. 95½, as amended (Ill. Rev. Stat.), effective July 8, 1957 (hereinafter referred to as the Act), be held unconstitutional and void, and that defendants be enjoined from enforcing or instituting proceedings against plaintiffs under the Act. Arkansas-Best Freight System, Inc. was granted leave to intervene. The District Court issued a temporary restraining order.

On January 15, 1958, a three-Judge Court was convened in accordance with the requirements of Title 28 U. S. C. A. Sec. 2284. On January 15 and 16, 1958, the Court heard testimony offered by the respective parties, as well as argument of counsel, at the conclusion of which the matter was taken under advisement.

The Act under attack, entitled "Rear fender splash guards," provides:

> "It is unlawful for any person to operate any motor vehicle * * * upon the highways of this state * * * unless such vehicle is equipped with rear fender splash guards which shall comply with the specifications hereinafter provided in this Section * * *."

The specifications require that the splash guards (1) contour under the wheel; (2) cover the top 90° of the rear 180° (excepting vehicles of less than five inches clearance, and requiring that they contour within two inches of the body); (3) extend downward to within ten inches of the ground; (4) have a lip or flange of two inches upon the outside edge, and (5) retain its general parallel condition under all operating conditions when mounted as required by the statute not more than six inches from the tread when fully loaded.

Plaintiffs named in the caption are all corporations organized and existing under laws of states other than Illinois. They are all engaged in the transportation of property by motor vehicle as a common carrier in interstate commerce generally over regular routes. They all operate pursuant to a certificate of public convenience and necessity issued by the Interstate Commerce Commission. None of plaintiffs other than Watson Bros. rendered any intrastate transportation in Illinois and hold no authority from the Illinois Commerce Commission to operate in such commerce. Watson Bros. operates to a limited extent in intrastate com-

merce in Illinois, for which it holds authority from the Illinois Commerce Commission.

Joseph D. Bibb is director of the Department of Public Safety of the State of Illinois, which department maintains the division known as the State Highway Police, of which defendant William H. Morris is Superintendent. These officials are charged with the duty and responsibility of enforcing the provisions of the Uniform Act Regulating Traffic on Highways, including the section involved in this proceeding.

Notwithstanding our findings of fact and conclusions of law entered concurrently with this opinion, we deem it advisable to elaborate on the factual as well as the legal situation. Navajo Freight Lines, Inc. (hereafter Navajo) is a New Mexico corporation with its principal office at Denver, Colorado. It operates between points in the states of Arizona, California, Colorado, Illinois, Indiana, Iowa, Kansas, Missouri, Nebraska, Nevada, New Mexico, Oklahoma and Texas. It operates approximately 32 million miles per year in interstate commerce, with 7% of its mileage over Illinois highways. Ringsby Truck Lines, Inc. (hereafter Ringsby) is a Nebraska corporation and operates between points in the states of California, Colorado, Illinois, Iowa, Kansas, Missouri, Nebraska, Nevada, Utah and Wyoming. It operates approximately 30 million miles per year in interstate commerce, of which 3% is over Illinois highways. Prucka Transportation, Inc. (hereafter Prucka) is a Nebraska corporation and operates between points in the states of Colorado, Illinois, Indiana, Iowa, Kansas, Missouri, Nebraska and Wyoming. It operates approximately 5 million miles per year in interstate commerce, of which 5% is over Illinois highways. Denver Chicago Trucking Co., Inc. (hereafter Denver) is a Nebraska corporation operating between points in the states of Arizona, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Kansas, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Utah, Washington and Wyoming. It operates approximately 57 million miles per year in interstate commerce, of which approximately 4% is over Illinois highways. Watson Bros. Transportation Co., Inc. (hereafter Watson) is a Nebraska corporation and operates between points in the states of Arizona, California, Colorado, Illinois, Iowa,

Kansas, Minnesota, Missouri, Nebraska, New Mexico, and Wyoming. It operates approximately 58 million miles per year in interstate commerce, of which 7% is over Illinois highways. Pacific Intermountain Express Co. (hereafter Pacific) is a Nevada corporation and operates between points in California, Colorado, Idaho, Illinois, Indiana, Kansas, Missouri, Montana, Nevada, Oregon, Utah, Washington and Wyoming. It operates approximately 90 million miles per year, of which 3% is over Illinois highways.

Each of the plaintiffs is at present operating its trailers with what is termed the conventional or straight mud or splash guard which is recognized as legal in all the forty-eight states other than Illinois. Each of the plaintiffs, in order to operate in Illinois, will be required to equip its trailers with the contour type splash guard required by the Illinois Act, the cost of which is $30 or more per vehicle. Navajo will be required to make such installation on approximately 733 trailers, at a cost of $21,990; Ringsby, on approximately 468 trailers, at a cost of $14,040; Prucka, on approximately 150 trailers, at a cost of $4,500; Denver on approximately 750 trailers, at a cost of $22,500; Watson, on approximately 1528 trailers, at a cost of $45,840; Pacific, on approximately 1200 trailers, at a cost of $36,000. Moreover from two to four hours of labor are required to install or remove a contour splash guard. The expense incident to maintenance and replacement is heavy.

The service rendered by plaintiffs requires that they interchange trailers, and for many years this has been the practice. For example, a carrier which serves between Portland, Oregon and Denver, Colorado, will handle and originate a trailer load of perishable commodities destined for Chicago. The original carrier will move the trailer from Portland to Denver and then deliver it, without transferring the load, for movement to destination via any one of the plaintiffs herein. This interchange service constitutes a substantial proportion of the transportation business of each of the plaintiffs, ranging from 30% to 65%. For example, in the year 1956, the revenue derived by Pacific from traffic which moved through its Chicago terminal amounted to approximately $3,182,000. The revenue derived by Watson for the month of May, 1957, moving through its Chicago terminal, amounted to approximately $1,000,000, of which more than one-third was on traffic

moved into the Chicago terminal from points outside of the state of Illinois. It derived revenue in the same month from freight moving through its Peoria, Illinois, terminal of approximately $107,000, of which about one-third was from freight moving into Peoria from points outside of the state of Illinois. Other plaintiffs received comparable revenue from interchange traffic passing through Illinois.

This interchange of traffic is necessary and essential for the efficient and prompt service which plaintiffs are required to render. More than that, a considerable portion of the service required of plaintiffs could not otherwise be rendered. For instance, plaintiffs render transportation service to the United States Government, including the transportation of explosives which are required to be handled in sealed trailers which cannot be opened until delivered. This service in the main could not be rendered absent the ability of the originating carrier to interchange with other carriers. Plaintiffs also carry substantial amounts of commodities which because of their nature, such as their size or weight, or because they are perishable, cannot be physically transferred from one trailer to another without damage and delay. Again, proper service can be rendered only because plaintiffs are able to interchange trailers, carrying such shipments, with other carriers which are authorized to complete the journey to the point of the shipment's destination. More than that, many shippers and consignees specify in their bills of lading that the commodity which they ship must remain in the same trailer until it reaches its destination.

This statement, so far, is in the main a brief resumé of the factual allegations of the complaint either admitted or not disputed by defendants. It should also be noted, and this is without dispute, that each of the plaintiffs upon entering Illinois is required not only to equip a trailer owned by it so as to comply with the Illinois Act, but is also required to equip a trailer in use by it but owned by another carrier. This it has no right to do without the specific authority of the other carrier.

We were led to believe at the time of the hearing, and still believe, that all of the states, except Illinois and perhaps Oregon and Idaho, require nothing more than the conventional or straight mud flap, none of which would comply

with the Illinois Act. During oral argument the followi
colloquy took place between Judge Briggle and Mr. Huste
counsel for defendants:

"Judge Briggle: In other words, the Illinois Act
for 48 states, there is no other state that would be a
ceptable in Illinois?

Mr. Husted: No.

Judge Briggle: You say Illinois would be accep
able in those states?

Mr. Husted: Yes.

Judge Briggle: But no one of those is acceptab
in Illinois, therefore, Illinois' act must be complied wi
by 48 states?

Mr. Husted: That is true."

Later, counsel modified his answers by stating that t
splash guard provided by Oregon and Idaho would be a
ceptable in Illinois. In the written brief subsequently file
counsel brands as untrue "plaintiffs' contention that 'spla
guards which are permitted in all other states are illeg
in Illinois' and that 'the Attorney General admits this as
45 states.'" The argument proceeds:

"As above explained, almost all of the states whi
have anti-splash statutes require a cover or fender a
certain ones permit the old style flap as an alternati
or stop-gap measure. *The fenders required by the
other states are legal in Illinois.* [Italics ours.]"

As we understand this statement, counsel for defendan
now claim that splash guards or fenders required by oth
states would be recognized by Illinois. It is difficult to b
lieve that such a concession was intended. If so, there is
reason for this law suit in which plaintiffs seek to invalida
the Illinois Act which prevents them for entering Illino
equipped with mud flaps in accordance with the laws of t
states of their respective domiciles.

It was also conclusively shown that the contour mu
flap possesses no advantages over the conventional
straight mud flap previously required in Illinois and pre
ently required in most of the states. Counsel for defen
ants in oral argument substantially so conceded, as ev
denced by the following statement, "There was a weal

of testimony to the effect that in their opinion the old style were better and were preferable and were cheaper and were longer lived, but nobody said that it bore no relation, no reasonable relation to the end sought." In connection with this admission it should be noted that counsel consistently throughout the hearing took the position that such comparison was irrelevant, objected to the admission of such testimony and for the same reason, we assume, offered no testimony on this point in rebuttal.

The intervenor, Arkansas-Best Freight System, Inc., is an Arkansas corporation and is engaged in the transportation of property by motor vehicle as a common carrier in interstate commerce between points in the states of Arkansas, Kansas, Missouri, Illinois, Louisiana and Texas, pursuant to a certificate of public convenience and necessity. The greater part of its operations over Illinois highways involves the transportation of property moving in interstate commerce.

On December 13, 1957, the Arkansas Public Service Commission entered an order which requires that trailers operating on Arkansas highways be equipped with "a perpendicular, flexible type mud guard hanging at a right angle from the trailer." Since the Illinois Act requires that the splash guard contour the wheel, it is evident that a single splash guard cannot satisfy the requirements of both states. It is, therefore, hardly open to doubt that use by intervenor of a splash guard which meets the requirements of the state of its domicile would be unlawful and not permitted in the state of Illinois. Conversely, a trailer equipped with a mud flap in accordance with the Illinois requirement would not be permitted in the state of Arkansas and its use in that state would be unlawful. In fact, a driver-employe of intervenor engaged in the operation of a trailer upon a public highway in Illinois was, on January 2, 1957, arrested and charged with a violation of the Illinois Act. A hearing on the charge was continued, pending the result of this litigation.

Intervenor's Director of Labor and Safety testified as to the situation resulting from the conflict in the requirements imposed by the two states. In response to the suggestion that a trailer at the state line might be stopped and equipped to comply with the Illinois Act, the witness stated:

"* * * that would entail quite a maintenance program and a terrific additional maintenance cost because we do all our maintenance work, all our major maintenance work at our Little Rock shop, and other points such as St. Louis and Fort Smith are merely emergency service points."

The witness also testified as to the problem presented in complying with the Illinois Act, with trailers received from other carriers in exchange and with trailers loaded with explosives:

"* * * we haul explosives from the Red River Arsenal in Texarkana, and there is one specific carrier I can think of now, Red Ball Motor Freight, who operates primarily in Louisiana and Texas. They also haul a lot of explosives out of there, and when that arsenal calls our Texarkana terminal manager to come out and get 'x' number of loads, they do not take in regard whose trailer it is, but they merely load so many trailers going in our direction, and we go out there and pull those trailers. If they were to load those on a Red Ball Trailer, and Red Ball, being a Texas domiciled carrier, we would be all right with his mud flap until we got to the Illinois line. Then we would have to stop there and add the contour mudflap, operate it east of St. Louis, and when it returns to St. Louis, we would have to remove it and the contour mud flap, having to be welded, we would have quite a problem welding them on and several days later going in there and attempting to take them off.

"Further, under the interchange carrier agreement, we would have to contact Red Ball Motor Freight in Dallas, Texas, and receive their authority to add this contour mudflap to their pieces of equipment.

* * *

"Q. With a load of explosives, would you be in a position to weld the contour mudflap on the trailer?

A. Definitely not.

Q. Why?

A. Because of the danger of explosion, fire, and things of that nature."

A witness for Watson described the problem presented by an attempt to comply with the Illinois Act, as follows:

> "Any time you stop a trailer to do anything to it, it disrupts the service. Motor carriers exist on a fast, efficient transportation service and, if we were required to stop a trailer, assuming we had permission to install the mudflap on a foreign trailer, that is, a connecting line trailer, if we were required to stop that trailer at some state line or some garage to install a contour mudflap, there is bound to be delay which restricts the kind and type of motor carrier service we have been providing for years."

It would unduly prolong this opinion to quote further from the testimony. It is sufficient to state that the testimony of the witnesses just quoted finds abundant corroboration in the record. In fact, the seriousness of the problem to interstate motor carriers is not challenged by defendants. Rather, the state takes the position that it is not concerned with the problem or the difficulty with which such carriers are presented. It is significant that during the hearing, including the argument, no practical or reasonable suggestion was made as to how the Act could be complied with.

Congress has not seen fit to exercise its constitutional power to legislate relative to splash guards on trailers engaged in interstate commerce. The importance of uniformity would seem to suggest the desirability of such legislation. However, in its absence the question arises as to what protection, if any, is afforded by the commerce clause of the Constitution. Defendants do not and could not dispute but that enforcement of the Act would impose some burden upon interstate commerce. Their position, however, is, as we understand, that such burden is immaterial in view of the fact that the Act is non-discriminatory as between intra- and interstate commerce, and further, that the Act is a reasonable exercise by the legislature of its police power, inasmuch as its purpose is to provide for the safety of persons an motor vehicles using the highways. Plaintiffs contend that the burden imposed upon commerce is of such magnitude as to entitle them to protection under the commerce clause, that it is greater than can be justified under the police power and without merit as a safety measure.

We gather from a study of the cases that the conflicting interest between the federal and state governments must be resolved in accordance with the facts of each case. It is our firm conviction, under the proof, that enforcement of the Act would impose not merely some but a tremendous burden upon interstate commerce. Particularly is this so as to commerce between the states of Illinois and Arkansas; in fact, commerce between those two states would be stymied to the extent that its future existence would be imperiled, if not obliterated. More than that, the same insurmountable burden would be imposed upon commerce between Illinois and any other state or states which might see fit to do as Arkansas has done, that is, exclude trailers equipped with the contour splash guard required by the Act. Furthermore, we are convinced that little, if anything, can be claimed for the Act as a safety measure. We have already noted the concession that the weight of the evidence is to the effect that the contour possesses no advantages over the straight or conventional mud flap. While there is some proof of advantages possessed by the contour flap, there is also proof of its disadvantages. In fact, there is rather convincing testimony that use of the contour flap creates hazards previously unknown to those using the highways.

Plaintiffs, in support of the contention that the Act should be held unconstitutional, rely upon *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, and *Morgan* v. *Virginia*, 328 U. S. 373. Defendants, in opposition thereto, rely upon *South Carolina State Highway Department, et al.* v. *Barnwell Brothers, Inc., et al.*, 303 U. S. 177, and *Maurer, et al.* v. *Hamilton*, 309 U. S. 598.

In the *Southern Pacific* case, the Court held unconstitutional the Arizona Train Limit Law which made unlawful operation within the state of a passenger train of more than fourteen cars or a freight train of more than seventy cars. In doing so it reversed the Supreme Court of Arizona which had sustained the Act as a safety measure within the police power of the legislature to enact. It can hardly be doubted but that the reasoning of the Court in Southern Pacific, if applicable, strongly supports plaintiffs' contention in the instant case. Defendants, however, deny its applicability on the ground that the statute there under consideration related to transportation by railroad, while in the instant case it relates to transportation by motor carrier, relying upon the *Barnwell* and *Hamilton* cases.

In these cases the Supreme Court sustained the validity of state legislation regulating motor traffic within the state. In *Barnwell*, the legislation prohibited the use on the state highways of South Carolina of motor trucks whose width exceeded 90" and whose weight included a load in excess of 2000#. In *Hamilton*, the Court sustained the validity of a Pennsylvania statute which prohibited the operation on the highways of the state of any vehicle carrying any other vehicle "above the cab of the carrier vehicle or over the head of the operator of such carrier vehicle." Undoubtedly, Barnwell and Hamilton stand for the proposition that a state in the exercise of its police power has greater latitude in the regulation of motor vehicles than it does of railroads. This is because the former generally is concerned with matters of local interest while the latter more often is concerned with the national interest.

In *Barnwell*, the Court stated (page 185):

> "* * * it has been recognized that there are matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce but which, because of their local character and their number and diversity, may never be fully dealt with by Congress. Notwithstanding the commerce clause, such regulation in the absence of Congressional action has for the most part been left to the states by the decisions of this Court, subject to the other applicable constitutional restraints."

Further, the Court stated (page 187):

> "Few subjects of state regulation are so peculiarly of local concern as is the use of state highways. There are few, local regulation of which is so inseparable from a substantial effect on interstate commerce. Unlike the railroads, local highways are built, owned and maintained by the state or its municipal subdivisions. The state has a primary and immediate concern in their safe and economical administration. The present regulations, or any others of like purpose, if they are to accomplish their end, must be applied alike to interstate and intrastate traffic both moving in large volume over the highways. The fact that they affect alike shippers in interstate and intrastate commerce in large numbers within as well as without the state is a safeguard against their abuse."

Thus, the Court treated the weight and width requirements as of local concern even though they affected interstate commerce. It was on this premise that the Court held the Act constitutional and stated that the inquiry under the commerce clause was whether the state legislature in adopting the regulations under attack (page 190) "has acted within its province, and whether the means of regulation chosen are reasonably adapted to the end sought."

The *Hamilton* case also treated the statute under attack as relating to a matter of local concern. The Court pointed out (page 605):

> "The width, grades, curves, weight-bearing capacity, surfacing and overhead obstructions of the highways differ widely in the forty-eight different states and in different sections of each state. There are like variations with respect to congestion of traffic. State regulation, developed over a period of years, has been directed to the safe and convenient use of the highways and their conservation with reference to varying local needs and conditions."

This appraisement of Barnwell and Hamilton appears to have been recognized by the Supreme Court in the later cases of *Southern Pacific Co.* and *Morgan*. For instance, in the *Southern Pacific* case (page 767) the Court stated:

> "When the regulation of matters of local concern is local in character and effect, and its impact on the national commerce does not seriously interfere with its operation, and the consequent incentive to deal with them nationally is slight, such regulation has been generally held to be within state authority." [Citing the *Barnwell* and *Hamilton* cases.]

In contrast, the Court on the same page stated:

> "But ever since *Gibbons* v. *Ogden*, 9 Wheat. 1, the states have not been deemed to have authority to impede substantially the free flow of commerce from state to state, or to regulate those phases of the national commerce which, because of the need of national uniformity, demand that their regulation, if any, be prescribed by a single authority."

The Court also stated (page 781):

> "More recently in *Kelly* v. *Washington*, 302 U. S. 1, 15, we have pointed out that when a state goes beyond

safety measures which are permissible because only local in their effect upon interstate commerce, and 'attempts to impose particular standards as to structure, design, equipment and operation [of vessels plying interstate] which in the judgment of its authorities may be desirable but pass beyond what is plainly essential to safety and seaworthiness, the State will encounter the principle that such requirements, if imposed at all, must be through the action of Congress which can establish a uniform rule. Whether the State in a particular matter goes too far must be left to be determined when the precise question arises.'"

The Court further stated (page 779):

"The principle that, without controlling Congressional action, a state may not regulate interstate commerce so as substantially to affect its flow or deprive it of needed uniformity in its regulation is not to be avoided by 'simply invoking the convenient apologetics of the police power,' *Kansas City Southern R. Co.* v. *Kaw Valley District*, 233 U. S. 75, 79 • • •."

This distinction drawn between regulations concerned with local matters and those involving the national interest is emphasized in the *Morgan* case, wherein the Court held unconstitutional an Act of Virginia which required passenger motor vehicle carriers, both interstate and intrastate, to separate without discrimination the white and colored passengers in their motor buses. First the Court discussed the test to be applied in determining whether a state statute is invalid as imposing an undue burden upon commerce. The Court stated (page 377):

"The precise degree of a permissible restriction on state power cannot be fixed generally or indeed not even for one kind of state legislation, such as taxation or health or safety. There is a recognized abstract principle, however, that may be taken as a postulate for testing whether particular state legislation in the absence of action by Congress is beyond state power. This is that the state legislation is invalid if it unduly burdens that commerce in matters where uniformity is necessary—necessary in the constitutional sense of useful in accomplishing a permitted purpose. Where uniformity is essential for the functioning of commerce,

a state may not interpose its local regulation. Too true it is that the principle lacks in precision. Although the quality of such a principle is abstract, its application to the facts of a situation created by the attempted enforcement of a statute brings about a specific determination as to whether or not the statute in question is a burden on commerce. Within the broad limits of the principle, the cases turn on their own facts."

The Court, commencing on page 378, cites many cases in support of three propositions:

(1) "In the field of transportation, there has been a series of decisions which hold that where Congress has not acted and although the state statute affects interstate commerce, a state may validly enact legislation which has predominantly only a local influence on the course of commerce. [Citing *Barnwell* and *Hamilton.*]"

(2) "It is equally well settled that, even where Congress has not acted, state legislation or a final court order is invalid which materially affects interstate commerce. [Citing *Southern Pacific.*]"

"(3) "Because the Constitution puts the ultimate power to regulate commerce in Congress, rather than the states, the degree of state legislation's interference with that commerce may be weighed by federal courts to determine whether the burden makes the statute unconstitutional. [Again citing *Southern Pacific.*]"

In appraising the effect which the statute had on interstate commerce, the Court stated (page 381):

"To appraise the weight of the burden of the Virginia statute on interstate commerce, related statutes of other states are important to show whether there are cumulative effects which may make local regulation impracticable."

In holding the Act unconstitutional, the Court further stated (page 386):

"As there is no federal act dealing with the separation of races in interstate transportation, we must decide the validity of this Virginia statute on the challenge that it interferes with commerce, as a matter of

balance between the exercise of the local police power and the need for national uniformity in the regulations for interstate travel."

Thus, the distinction between the two lines of cases does not arise, as defendants contend, from the fact that the Court, in *Barnwell* and *Hamilton*, was concerned with transportation by motor vehicle and in *Southern Pacific* with transportation by railroad. The distinction lies in the fact that in the two former cases the provisions under consideration related to matters of local concern while in the latter case the provision related to a matter of national concern. Defendants apparently recognize this distinction by arguing that the Act under attack is of local concern, on the basis that Illinois is a "wet-weather" state, having a large amount of wet, rainy and snowy weather, causing its roads to be wet and dirty for a substantial portion of each year. Defendants offered in evidence a report of the United States Weather Bureau showing the average annual precipitation at different points in the state. No similar proof, or proof of any kind, was offered as to the weather and highway conditions in other states. The mere fact that large amounts of rain and snow fall upon the highways of Illinois furnishes no support to the argument that the requirement as to splash guards is a matter of local concern in the absence of a showing that weather conditions affecting highways is different in other states, particularly those surrounding Illinois. We know, however, from experience common to all who travel the highways of this country that the situation under discussion is the same or similar in many states, and perhaps all. Particularly is that true in states surrounding Illinois and others of the midwest.

Defendants take no note of the burden which the Act places upon commerce, which perhaps is consistent with the theory that it relates to a matter of local concern and the burden, therefore, is immaterial. We reject the premise upon which this theory is predicated. The burden is material because enforcement directly relates to the national interest. That burden, in our judgment, will be tremendous. In fact, enforcement is likely to produce a demoralizing effect upon the operations conducted by plaintiffs, the intervenor and others similarly engaged. The certificate of public convenience and necessity issued to plaintiffs and other motor carriers by the Interstate Com-

merce Commission requires that they "shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure to do so shall constitute sufficient grounds for suspension, change or revocation of this certificate." It is not discernible to us how plaintiffs can discharge their responsibilities under this certificate and at the same time comply with the requirements of the Illinois Act. It is hardly open to question but that compliance will result in intolerable delay in transportation and the expenditure of large sums of money for equipment and maintenance.

We are not impressed with defendants' argument that the Act should be sustained on the basis that the legislature acted within its police power and that the means of regulation chosen by it are reasonably adapted to the end sought. We assume that the contour splash guard will serve some beneficial purpose in eliminating splash. The same could be said for a piece of cardboard or other object hung behind the rear wheels of a trailer. As already shown, the conventional or straight mud flap previously recognized in Illinois and presently recognized by most and perhaps all of the other states served the purpose of preventing splash as well as does the contour guard. The result of the requirements of the Act is to place a great burden upon commerce, without any compensating benefit to the state. Under the circumstances, it cannot be held that the requirements of the Act are reasonably adapted to the end sought. In any event, a challenge that the Act interferes with commerce requires this Court to decide its validity "as a matter of balance between the exercise of the local police power and the need for national uniformity in the regulations for interstate travel." *Morgan* v. *Virginia*, 328 U. S. 373, 386. In our judgment, the burden which the Act casts upon commerce far outweighs any benefit derived by the state.

It is, therefore, our view and we so hold that the Act is unconstitutional and void, as violative of Article I, Section 8, of the Constitution of the United States, and that plaintiffs are entitled to a decree permanently enjoining its enforcement.

Indorsed

Filed Feb. 26, 1958.

G. W. Schwaner, Clerk.

APPENDIX II.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
SOUTHERN DIVISION

Navajo Freight Lines, Inc., a New Mexico Corporation, et al. vs. Joseph D. Bibb, Director of the Department of Public Safety of the State of Illinois, et al.	Civil Action No. 2438 In Chancery

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

I. FINDINGS OF FACT.

1. That each of the plaintiffs operates in interstate commerce pursuant to certificates of public convenience and necessity issued by the Interstate Commerce Commission.

2. That pursuant to said certificates, each of the plaintiffs operates into and through the State of Illinois.

3. That intervener Arkansas-Best Freight System, Inc. operates in interstate commerce pursuant to a certificate of public convenience and necessity issued by the Interstate Commerce Commission.

4. That pursuant to said authority, Arkansas-Best Freight System, Inc. operates between points in Arkansas and Illinois, as well as between Arkansas and other States through Illinois.

5. That intervenor Arkansas-Best Freight System, Inc. also operates in intrastate commerce in the State of Arkansas, pursuant to authority granted by the Arkansas Public Service Commission, and is subject to the rules and regulations of said Commission.

6. That Section 121.02 of the Uniform Act Regulating Traffic on Highways, being Section 218b of Chapter 95½, Illinois Revised Statutes, as amended, by Act approved

July 8, 1957, requires that trailers of plaintiffs and intervener be equipped with a contour splash guard meeting certain described specifications and contouring the wheel within six (6) inches of the tire.

7. That compliance with said Act for vehicles used exclusively in interstate commerce by plaintiffs and intervener would cost each of them in excess of Three Thousand ($3,000.00) Dollars.

8. That on December 13, 1957 the Arkansas Public Service Commission issued an order requiring that all vehicles using Arkansas highways be equipped with the straight splash guard hanging perpendicular to the trailer and parallel to the rear axle.

9. That it is impossible for a splash guard to comply with the requirements of the Illinois Splash Guard Act and the order of the Arkansas Public Service Commission.

10. That a vehicle equipped with the splash guard required in Illinois cannot be operated legally in Arkansas, and a vehicle equipped with the splash guard required in Arkansas cannot be operated legally in Illinois.

11. That the splash guards permitted or required in 45 States are illegal in the State of Illinois by virtue of the Illinois Splash Guard Act.

12. That by virtue of the conflicting requirements of Illinois and Arkansas, the free flow of commerce by motor carriers is obstructed because equipment legal in one State is illegal in the other.

13. That each of the plaintiffs and intervener interchanges trailers with carriers throughout the United States in accordance with common and accepted practice of motor carriers in interstate commerce in order to provide through trailer service from origin to destination in compliance with the certificate of public convenience and necessity issued to them by the Interstate Commerce Commission.

14. That the trailers of each of the plaintiffs may reasonably be expected to traverse each of the 48 States by virtue of the interlining practices of plaintiffs and intervener with other carriers.

15. That the trailers of each of the plaintiffs traverse upon highways of the State of Arkansas.

16. That because trailers equipped in accordance with Illinois splash guard requirements cannot be operated legally in Arkansas, and trailers equipped in accordance with Arkansas splash guard requirements cannot be operated legally in Illinois, the interlining operations of plaintiffs will be obstructed.

17. That all carriers who operate into or through Illinois from any point in the United States will be required to equip their vehicles in accordance with the Illinois Splash Guard statute.

18. That all carriers whose equipment is sent into or through Illinois by virtue of interlining will be required to equip their vehicles in accordance with the Illinois Splash Guard statute.

19. That since it is impossible for a carrier operating in interstate commerce to determine which of its equipment will be used in a particular area, or on a particular day, or days, carriers operating into or through Illinois, or whose equipment may operate into Illinois through interlining will be required to equip all of their trailers in accordance with the requirements of the Illinois Splash Guard statute.

20. That because plaintiffs who operate into and through Illinois have no way of compelling carriers with whom they interline to equip their trailers in accordance with the Illinois splash guard statute, they will be forced to cease interlining trailers destined to or through Illinois with carriers who do not comply with Illinois law.

21. That it would be impossible in most cases, and impracticable in others, for plaintiffs to equip trailers obtained by interlining with the splash guard required by Illinois.

22. That the practice of interlining or interchanging trailers is an important means by which plaintiffs serve the shipping public in accordance with certificates of public convenience and necessity issued to them by the Interstate Commerce Commission, and is vital to the very existence of plaintiffs.

23. That the contour splash guard required by Section 121.02 of the Uniform Act Regulating Traffic on Highways, being Section 218h of Chapter 95½, Illinois Revised Statutes, as amended, by Act approved July 8, 1957, is not

intended to nor does it deal with a safety need or problem peculiar to the State of Illinois.

24. That the contour splash guard required in Illinois does not reduce the spray and splash caused by motor vehicles on highways any more effectively than the conventional or straight splash guard permitted in forty-five (45) States, if as well.

25. That because the contour splash guard is difficult to properly affix to the trailer, and because in its position it is peculiarly liable to receive many blows and be subject to vibration, it is particularly liable to come off while the vehicle is in operation, presenting a hazard to oncoming traffic, and creating a difficult and costly maintenance problem for carriers.

26. That since because of the Illinois Contour Splash Guard Act vehicles will be traveling with said guards in all forty-eight (48) States, the danger and safety hazards created by said guard will hinder and obstruct commerce on highways throughout the United States.

27. That because of the shrouding effect of the contour splash guard heat dissipation from air flow around the brake drum is reduced, creating brake fade from overheated brakes.

28. That brake fade increases the distance needed for a vehicle to stop, since the contour guard will be used throughout the United States, a new hazard will be added to highway travel in interstate commerce all over the United States.

29. That plaintiffs are seeking by this action to have the contour splash guard state of the State of Illinois declared invalid and unconstitutional as an undue and unreasonable burden and obstruction to the free flow of interstate commerce.

30. That said Illinois Contour Splash Guard Act, while placing a substantial burden and obstruction upon the free flow of interstate commerce, does not contribute to safety in Illinois, and in fact introduces new dangers and hazards to highway travel in Illinois and throughout the United States not hitherto in existence.

II. CONCLUSIONS OF LAW.

1. That the matter in controversy exceeds the sum of Three Thousand ($3,000.00) Dollars for each plaintiff and intervener, exclusive of interest and costs and arises under the Constitution and laws of the United States.

2. That this Court has jurisdiction of the parties and the subject matter of this action.

3. That enforcement of Section 121.02 of the Uniform Act Regulating Traffic on Highways, being Section 218b of Chapter 95½, Illinois Revised Statutes, as amended, by Act approved July 8, 1957 requiring that plaintiffs' and intervener's trailers be equipped with contour splash guards, and the Order of the Arkansas Public Service Commission issued December 13, 1957, requiring that plaintiffs' and intervener's trailers be equipped with the straight or conventional splash guards will render it impossible for plaintiffs and intervener to operate the same equipment in both States, thereby obstructing the free flow of commerce in direct violation of the Commerce Clause, Article I, Section 8 of the United States Constitution, and said Illinois Act is, therefore, unconstitutional and invalid.

4. That Section 121.02 of the Uniform Act Regulating Traffic on Highways, being Section 218b of Chapter 95½, Illinois Revised Statutes, as amended, by Act approved July 8, 1957, unduly and unreasonably burdens and obstructs the free flow of commerce between the States by making splash guards which are legal in forty-five (45) States illegal in Illinois, and is, therefore, unconstitutional and invalid as a direct violation of the Commerce Clause, Article I, Section 8 of the United States Constitution.

5. That plaintiffs and intervener are entitled to a permanent injunction enjoining and restraining the defendants, and each of them, their successors in office and their agents, attorneys and employes, and each and every one of them, from enforcing or instituting proceedings to enforce Section 121.02 of the Uniform Act Regulating Traffic on Highways, being Section 218b of Chapter 95½, Illinois Revised Statutes, as amended, by Act approved July 8, 1957 by reason of the fact that said Act is an unreasonable and undue burden and obstruction to the free flow of interstate

commerce in violation of the Commerce Clause, Article I, Section 8 of the United States Constitution.

ENTER:

/s/ J. EARL MAJOR
/s/ CHAS. G. BRIGGLE
/s/ FREDERICK O. MERCER

Dated: Feb. 26, 1958.
Indorsed Filed
Feb. 26, 1958
G. W. Schwaner, Clerk

APPENDIX III.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
SOUTHERN DIVISION

Navajo Freight Lines, Inc.,
a New Mexico corporation,
Ringsby Truck Lines, Inc.
a Nebraska corporation,
Prucka Transportation, Inc.,
a Nebraska corporation,
Denver Chicago Trucking Co., Inc.,
a Nebraska corporation, and
Pacific Intermountain Express Co.,
a Nevada corporation,
Plaintiffs,

and

Arkansas-Best Freight System, Inc.,
An Arkansas corporation,
Intervenor,

vs.

Joseph D. Bibb, Director of the Department of Public Safety of the State of Illinois

and

William H. Morris, Superintendent of the Division of State Highway Police, Department of Public Safety of the State of Illinois,
Defendants.

Civil Action
No. 2438
For Declaratory
Judgment
and Injunctive
Relief

ORDER.

This cause coming on to be heard on the complaint of plaintiffs, Navajo Freight Lines, Inc., Ringsby Truck Lines, Inc., Prucka Transportation, Inc., Denver Chicago Trucking Co., Inc., Watson Bros. Transportation Co., Inc. and Pacific Intermountain Express Co., and the intervening petition and complaint of intervenor, Arkansas-Best Freight System, Inc., for a declaratory judgment that Section 121.02 of the Uniform Act Regulating Traffic on High-

ways, being Sec. 218b of Chap 95½ (Ill. Rev. Stat.), as amended by Act approved July 8, 1957, is unconstitutional and void and for a permanent injunction enjoining defendants from enforcing or instituting proceedings against plaintiffs under the said Act, the Court having jurisdiction of the parties and the subject matter, being fully advised in the premises having heard the evidence and the arguments of all the parties hereto in open court, having considered the briefs submitted by the parties, and having filed its findings of fact, conclusions of law and opinion on February 26, 1958 holding Section 121.02 of the Uniform Act Regulating Traffic on Highways, being Section 228b of Chapter 95½, Illinois Revised Statutes, as amended by Act approved July 8, 1957 to be unconstitutional and void, as violative of Article I, Section 8, of the Constitution of the United States.

It Is Hereby Ordered, Adjudged And Decreed that the defendants, Joseph D. Bibb, Director of the Department of Public Safety of the State of Illinois, and William H. Morris, Superintendent of the Division of State Highway Police, Department of Public Safety of the State of Illinois, and each of them, their successors in office and their agents, servants, attorneys and employees be and they are hereby permanently restrained and enjoined from enforcing or instituting any proceedings of any kind or nature whatsoever against the plaintiffs or intervenor herein for violations of Section 121.02 of the Uniform Act Regulating Traffic on Highways, being Section 218b of Chapter 95½, Illinois Revised Statutes, as amended, by Act approved July 8, 1957.

Enter:

/s/ Chas. G. Briggle

/s/ Frederick O. Mercer

Dated: March 10th, 1958

Indorsed Filed

Mar. 19, 1958

G. W. Schwaner, Clerk

CERTIFICATE OF SERVICE.

I, William C. Wines, one of counsel for appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on or before the 9th day of June, 1958, I served copies of the foregoing Jurisdictional Statement on Appellees, as follows:

By mailing of five copies of said Jurisdictional Statement to

Axelrod, Goodman and Steiner
39 South La Salle Street
Suite 703
Chicago 3, Illinois

Arnold Lloyd Burke
100 W. Monroe Street
Suite 1410
Chicago 3, Illinois

Stephenson and Routman
208 W. Adams Street
Springfield, Illinois

Harper, Harper and Young
Kelly Building
Ft. Smith, Arkansas

in duly addressed envelopes, postage prepaid.

WILLIAM C. WINES
One of Counsel for Appellants.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 91

JOSEPH D. BIBB, Director of the Department of Public Safety of the State of Illinois, and **WILLIAM H. MORRIS**, Superintendent of the Division of State Highway Police, Department of Public Safety of the State of Illinois,

Appellants,

vs.

NAVAJO FREIGHT LINES, INC., a New Mexico corporation, **RINGSBY TRUCK LINES, INC.**, a Nebraska corporation, **PRUCKA TRANSPORTATION, INC.**, a Nebraska corporation, **DENVER CHICAGO TRUCKING CO., INC.**, a Nebraska corporation, **WATSON BROS. TRANSPORTATION CO., INC.**, a Nebraska corporation, **PACIFIC INTERMOUNTAIN EXPRESS CO.**, a Nevada corporation, and **ARKANSAS-BEST FREIGHT SYSTEM, INC.**, an Arkansas corporation,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION

MOTION TO AFFIRM.

DAVID AXELROD,
JACK GOODMAN,
CARL L. STEINER,
ARNOLD L. BURKE,
39 South LaSalle Street,
Chicago 3, Illinois,
CEntral 6-9375,
Counsel for Appellees, Navajo Freight Lines, Inc., Ringsby Truck Lines, Inc., Prucka Transportation, Inc., Denver Chicago Trucking Co., Inc., Watson Bros. Transportation Co., Inc., Pacific Intermountain Express Co.

MACK STEPHENSON,
208 East Adams Street,
Springfield, Illinois,

INDEX.

Cases and Statutes Cited.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. .....

JOSEPH D. BIBB, Director of the Department of Public Safety of the State of Illinois, and WILLIAM H. MORRIS, Superintendent of the Division of State Highway Police, Department of Public Safety of the State of Illinois,

Appellants,

vs.

NAVAJO FREIGHT LINES, INC., a New Mexico corporation, RINGSBY TRUCK LINES, INC., a Nebraska corporation, PRUCKA TRANSPORTATION, INC., a Nebraska corporation, DENVER CHICAGO TRUCKING CO., INC., a Nebraska corporation, WATSON BROS. TRANSPORTATION CO., INC., a Nebraska corporation, PACIFIC INTERMOUNTAIN EXPRESS CO., a Nevada corporation, and ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas corporation,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION.

MOTION TO AFFIRM.

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the final judgment and Decree of the District Court be affirmed on the ground that the question is so unsubstantial as not to warrant further argument.

STATEMENT.

This is a direct appeal pursuant to 28 U. S. C. A. Section 1253 from the final judgment and decree entered on March 19, 1958, by a District Court of three judges specially constituted pursuant to 28 U. S. C. A. Section 2284, holding Sec. 121.02 of the Uniform Act Regulating Traffic on Highways, being Section 218b of Chap. 95½, as amended (Ill. Rev. Stat.), approved July 8, 1957, to be unconstitutional and void, and permanently enjoining the defendants from enforcing or instituting proceedings against plaintiffs under the Act. The opinion of the District Court is officially reported at 159 F. Supp. 385.

Section 121.02 of the Uniform Act Regulating Traffic on Highways, being Section 218b of Chap. 95½, as amended (Ill. Rev. Stat.), approved July 8, 1957 (hereinafter referred to as the "Act") requires a "contour splash guard" behind the rear wheels of certain vehicles before they may be operated upon the highways of the State of Illinois. The Act became effective as to newly purchased vehicles on August 1, 1957 and as to all vehicles on January 1, 1958 (J. St. 4). On December 2, 1957, plaintiffs, Navajo Freight Lines, Inc., Ringsby Truck Lines, Inc., Prucka Transportation, Inc., Denver Chicago Trucking Co., Inc., Watson Bros. Transportation Co., Inc. and Pacific Intermountain Express Co. filed the instant action to have the Act declared unconstitutional and void and for an injunction restraining defendants from enforcing or instituting proceedings against them under the Act.

On December 18, 1957, Arkansas-Best Freight System, Inc. intervened in support of plaintiffs. On January 15 and 16, 1958 the District Court heard testimony and argu-

ment presented by the respective parties, after which the matter was taken under advisement. At the request of the District Court, briefs were submitted by all of the parties. On February 26, 1958 the Court handed down its opinion, conclusions of law and findings of fact. The final order was entered March 19, 1958.

ARGUMENT.

The District Court's decision is plainly correct. This Court has considered the issue presented by this litigation on numerous occasions, since its first pronouncement in *Gibbons* v. *Ogden,* 9 Wheat (U. S.) 1, 6 L. Ed. 23. Each time it has affirmed the principles set out in that case. Simply stated, the only issue presented by this appeal is whether or not a Federal Court has the power, indeed the duty, under Article I, Sec. 8 of the Constitution of the United States, to protect the free flow of commerce by holding unconstitutional a state statute which clearly places a substantial burden and obstruction upon the free flow of interstate commerce with absolutely no compensating local benefits.

Appellees submit that this Court's statement in *Southern Pacific Co.* v. *Arizona,* 325 U. S. 761, is controlling here. There being no factual issue raised, the following statement in that case was correctly followed by the District Court (325 U. S., at page 767):

> "But ever since *Gibbons* v. *Ogden,* 9 Wheat. (U. S.) 1, 6 L. Ed. 23, the states have not been deemed to have authority to impede substantially the free flow of commerce from state to state, or to regulate those phases of national commerce, which, because of the need of national uniformity, demand that their regulation, if any, be prescribed by a single authority."

After hearing almost two days of testimony presented by the parties, the District Court, both in its opinion and findings of fact, made very comprehensive findings covering the entire subject matter. Its key and decisive finding was "That said Illinois Contour Splash Guard Act, while placing a substantial burden and obstruction upon the free

flow of interstate commerce, does not contribute to safety in Illinois, and, in fact, introduces new dangers and hazards to highway travel in Illinois and throughout the United States not hitherto in existence." (Finding of Fact No. 30). Furthermore, in its opinion the District Court stated (159 F. Supp. at 388-389, J. Stat. at Appendix 6-7):

> "It was also conclusively shown that the contour mud flap possesses no advantages over the conventional or straight mud flap previously required in Illinois and presently required in most of the states. Counsel for defendants in oral argument substantially so conceded, as evidenced by the following statement 'There was a wealth of testimony to the effect that in their opinion the old styles were better and were preferable and were cheaper and were longer lived, but nobody said that it bore no relation, no reasonable relation to the end sought.' In connection with this admission it should be noted that counsel consistently throughout the hearing took the position that such comparison was irrelevant, objected to the admission of such testimony, and for the same reason, we assume, offered no testimony on this point in rebuttal."

Perhaps belatedly regretting this uncompromising position taken by counsel for the state at the trial, the appellants in their jurisdictional statement now seek to escape the force of the trial court's findings by mentioning some isolated bits of evidence "not summarized in the Court's opinion or reflected in its findings of fact." Thus, the appellants state that "a plastic contour splash guard when backed into an object * * * snaps back into position and is not damaged. Even when a plastic contour splash guard was subjected to ten times the vibration that you would get on the wood, it was not damaged." (J. Stat. p. 9.) However, the District Court specifically found "That because the contour splash guard is difficult to properly affix to the trailer, and because in its position it is peculiarly liable

to receive many blows and be subject to vibration, it is particularly liable to come off while the vehicle is in operation, presenting a hazard to oncoming traffic, and creating a difficult and costly maintenance problem for carriers." (Findings of Fact No. 25.) This finding reflects an elaborate demonstration in the record establishing the difficulties encountered in keeping the contour splash guard in position.

Appellants also assert that "a contour splash guard unlike a 'flat' or 'apron' type mud guard will throw debris down instead of straight out and that when one follows a vehicle with 'inadequate' splash guards, water is thrown on the windshield and he is forced off the paved area with the result that many accidents are caused." (J. Stat. p. 9.) But the District Court specifically found "That the contour splash guard required in Illinois does not reduce the spray and splash caused by motor vehicles on highways any more effectively than the conventional or straight splash guard permitted in forty-five (45) states, if as well."[1] (Finding of Fact No. 24.) Here again the Court's finding accurately reflects an overwhelming factual demon-

1. The District Court stated: "We were led to believe at the time of the hearing, and still believe, that all of the states, except Illinois and perhaps Oregon and Idaho, require nothing more than the conventional or straight mud flap, none of which would comply with the Illinois Act." (J. Stat. at Appendix pp. 5-6.) It is the requirement of the Illinois Act that the splash guard "contour" the wheel in a certain prescribed way that makes the Illinois statutory requirement different than that of any other state. The statutes of all other states—even those using the word fender—may be satisfied by the so-called straight or conventional splash guard. The straight or conventional splash guard is presently in use in both Idaho and Oregon. (Transcript of Proceedings 108-109.) A mere reading of the Idaho (Title 49, Sec. 840 Idaho Code 1957) and Oregon (Sec. 483.458 Oregon Revised Statute 1955) statutes demonstrates that a straight splash guard will satisfy their requirements, since the bottom of the trailer itself forms the cover over the wheel and neither Oregon nor Idaho specify that the required splash guard *contour* the wheel a certain distance from the tire.

stration that the contour splash guard contributes nothing to safety in operations that is not equally accomplished by conventonal splash guards.

Although the cost of installing contour splash guards is not determinative to the holding herein, again the appellants have misstated the facts by asserting that "[t]hey can be installed for about $10 a set." (J. Stat. 9.) The Court found (159 F. Supp. at page 387, J. Stat. at Appendix, page 4): "Each of the plaintiffs in order to operate in Illinois, will be required to equip its trailers with the contour type splash guard required by the Illinois Act, the cost of which is $30 or more per vehicle." The Court also noted that "expense incident to maintenance and replacement is heavy."

Appellants also assert that "A captain of the Illinois State Highway Police testified that no accidents had been caused by contour splash guards." (J. Stat. page 10.) This is apparently a feeble effort to contradict the court's findings with regard to the road hazards introduced by the Act. To be strictly accurate, the captain testified that he did not know of any accidents in Illinois caused by contour splash guards. Significantly, the same captain admitted that he did not know of any accidents caused by splash or spray during the same period, although most vehicles were operating with the straight splash guards rather than the contour guards. (Transcript of Proceedings, 258.)

Although the appellants seek to deal with the obstruction of commerce between Illinois and Arkansas created by the Act with "only a word" (J. Stat. 14), the problem presented is a major one. The District Court did not find that "it is possible to change mudguards in interstate transit", as might be inferred by reading the Jurisdictional Statement. (J. Stat. 14.) On the contrary it specifically found "That it would be impossible in most cases, and impracticable in others, for plaintiffs to equip trailers obtained by inter-

lining with the splash guard required by Illinois". (Findings of Fact No. 21) and it further found "That by virtue of the conflicting requirements of Illinois and Arkansas, the free flow of commerce by motor carriers is obstructed because equipment legal in one state is illegal in the other" (Findings of Fact No. 12; see also Nos. 9, 10 and 16.) These findings are based upon an abundance of evidence contained in the record.

Thus, the comprehensive Findings of Fact made by the District Court establish conclusively that the contour splash guard required by the Act places a very substantial and undue burden and obstruction upon interstate commerce while contributing nothing new to safety on Illinois highways. In fact, the Court specifically found that certain new hazards are created by the contour splash guard which are not caused by conventional splash guards.

The clear and conclusive findings of the District Court place the issue of law in clear focus. Upon such a record, what is the duty of the Federal Courts, under the Constitution, with regard to the protection of the free flow of interstate commerce?

Appellants throughout this proceeding have maintained that the police power of the State of Illinois permits the state to pass any law reasonably adapted to its stated objective, without concerning itself with the obstruction to or burden upon interstate commerce. Their position has been that if the contour splash guard required by the statute, considered by itself, contributes something towards minimizing spray and thus enhancing safety, the requirement is justified, even though other equipment more generally in use accomplishes the same purpose just as effectively without any of the accompanying hazards and burdens caused by the contour guards. In the Jurisdictional Statement the same proposition is stated as follows (at pages 13-14):

"[a] State may adopt reasonable regulations as to the

equipment to be used on its highways and such regulations may extend to vehicles traveling in interstate as well as intrastate commerce."

Appellants do not seem to regard the fact that the Act unduly burdens and even obstructs interstate commerce as important. The District Court also commented upon this refusal of appellants to take cognizance of the commerce question (159 F. Supp. at page 394; J. Stat. Appendix pages 15-16):

> "Defendants take no note of the burden which the Act places upon commerce, which perhaps is consistent with the theory that it relates to a matter of local concern, and the burden, therefore, is immaterial. We reject the premise upon which this theory is predicated. The burden is material because enforcement directly relates to the national interest. That burden, in our judgment, will be tremendous. In fact, enforcement is likely to produce a demoralizing effect upon the operations conducted by plaintiffs, the intervenor, and others similarly engaged."

The function, indeed the duty, of a federal court when a state statute is attacked as an undue burden and obstruction upon interstate commerce, has already been clearly enunciated. In *Kelly v. State of Washington ex rel., Foss & Co.*, 302 U. S. 1, 15, this Court said:

> "We have found that in relation to the inspection of the hull and machinery of these tugs, in order to insure safety and seaworthiness, there is a field in which the state law could operate without coming into conflict with present Federal laws. Is that a subject which necessarily and in all aspects requires uniformity of regulation and as to which the State cannot act at all, although Congress has not acted? We hold that it is not. A vessel which is actually unsafe and unseaworthy in the primary and commonly understood sense is not within the protection of that principle. The State may treat it as it may treat a diseased animal

or unwholesome food. In such a matter, the State may protect its people without waiting for Federal action providing the state action does not come into conflict with Federal rules. *If, however, the State goes further and attempts to impose particular standards as to structure, design, equipment and operation which in the judgment of its authorities may be desirable but pass beyond what is plainly essential to safety and seaworthiness, the State will encounter the principle that such requirements, if imposed at all, must be through the action of Congress which can establish a uniform rule. Whether the State in a particular matter goes too far must be left to be determined when the precise question arises.*" (Italics supplied.)

Similarly, in *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, at 770-771 and 781-782, this Court stated:

"* * * [T] he matters for ultimate determination here are the nature and extent of the burden which the state regulation of interstate trains adopted as a safety measure, imposes on interstate commerce, and whether the relative weights of the state and national interests involved are such as to make inapplicable the rule generally observed, that the free flow of interstate commerce and its freedom from local restraints in matters requiring uniformity of regulation are interests safeguarded by the commerce clause from state interference.

* * * * * * *

"Here we conclude that the state does go too far. Its regulation of train lengths, admittedly obstructive to interstate train operation, and having a seriously adverse effect on transportation efficiency and economy, passes beyond what is plainly essential for safety since it does not appear that it will lessen rather than increase the danger of accident. Its attempted regulation of the operation of interstate trains cannot establish nation-wide control such as is essential to the maintenance of an efficient transportation system, which Congress alone can prescribe. The state interest cannot be preserved at the expense of the national interest

by an enactment which regulates interstate train lengths without securing such control, which is a matter of national concern. To this the interest of the state here asserted is subordinate."

Finally, this Court, in *Morgan v. Commonwealth of Virginia*, 328 U. S. 373, a motor carrier case, very recently had occasion to reaffirm its holding in the *Southern Pacific* case, and to make clear that the same basic principle applies as much to motor carriers as to rail and water carriers. There, this Court succinctly summarized the effects of the previous cases in the transportation area as follows:

"In the field of transportation, there has been a series of decisions which hold that where Congress has not acted and although the state statute affects interstate commerce, a state may validly enact legislation which has predominantly only a local influence on the course of commerce. [Citing *inter alia*, *South Carolina v. Barnwell Bros.*, 303 U. S. 177, and *Maurer v. Hamilton*, 309 U. S. 598.] It is equally well settled that, even where Congress has not acted, state legislation or a final court order is invalid which materially affects interstate commerce. [Citing *Southern Pacific*.] Because the Constitution puts the ultimate power to regulate commerce in Congress, rather than the states, the degree of state legislation's interference with that commerce may be weighed by Federal Courts to determine whether the burden makes the statute unconstitutional. [Again citing *Southern Pacific*.]" (328 U. S. at 378-379.)

This Court has, therefore, by a series of cases clearly outlined the responsibility of a federal court to protect the free flow of commerce between the states. This Court has also made it clear that this obligation applies to all types of commerce, and more particularly to all types of transportation. Appellants' question "Is the Act within the police power of the State of Illinois reserved to the states

under the provisions of the Tenth Amendment to the Constitution of the United States?" (J. Stat. 7) has already been answered by the *Morgan* case. The Court stated that the Constitution places the ultimate power to regulate commerce in Congress, and therefore "[T]he degree of state legislation's interference with that commerce may be weighed by federal courts to determine whether the burden makes the statute unconstitutional." (328 U. S. at page 378.)

The appellants apparently undertake to carve out a special area where these established principles have no application—namely, any state regulation purporting to deal with the safety of motor vehicle operations. A moment's consideration of the breadth of this proposition will demonstrate its inherent unsoundness. It would leave each state entirely free to prescribe the exact type of motor vehicle equipment favored by that particular state, even though numerous other types in actual operation in interstate commerce were equally suitable from the standpoint of safety and perhaps more desirable from the standpoint of efficiency. Thus, interstate commerce by motor carrier would become virtually impossible unless all states could agree on a single type of equipment, or the federal government stepped in to provide a single uniform rule. This is exactly the result which Chief Justice Hughes foresaw and warned against in *Kelly* v. *State of Washington, ex rel., Foss & Co., supra.*

Close examination of the cases relied upon by the appellants will also establish the unsoundness of their position. For example, they would interpret the *Barnwell* case as a complete abdication of the responsibility of the federal courts to protect interstate commerce from undue burdens imposed by the states, so long as the commerce involved proceeds by motor carrier rather than by rail, water or air. Careful reading discloses that Mr. Justice Stone did not

intend any such unique and discriminatory withdrawal of federal protection from interstate commerce by motor carrier. His opinion emphasizes throughout the special relationship between the size and weight of motor vehicles and the construction and upkeep of the roads themselves, which is so largely a state function. There is no such special relationship between the construction and upkeep of the highways and the exact type of splash guard which should be used by vehicles using the highways. Furthermore, even with regard to the particular type of regulation involved in the *Barnwell* case, Mr. Justice Stone did not foreclose judicial scrutiny of the reasonableness of the legislation and its bona fide connection with the preservation and use of the highways. Thus, even where there is some special relationship between the needs of the state and the legislation, he indicated only that the legislative judgment was entitled to the presumption of validity and that this presumption could be upset by showing that facts judicially known or established in the record demonstrated the unreasonableness of the legislative judgment. As Mr. Justice Stone's opinion also indicates, the record in the *Barnwell* case itself provided "adequate support" for the legislative judgment. (303 U. S. at 195.) Included in that record was the report of a special commission appointed to investigate motor transportation in the state and the report of the state engineer who had constructed the concrete highways of the state indicating the need for size and weight limitations at least as rigorous as those prescribed. Needless to say, there is no comparable objective and disinterested evidence in the record of this case, or in the history of this legislation, indicating the need for, or appropriateness of, contour splash guards, either to preserve the highways of Illinois, or to enhance the safety of their use. On the contrary, the Dis-

trict Court specifically found that the Act did not contribute to safety, and in fact introduced new hazards to highway travel throughout the United States.

In the *Maurer* case, upon which the Attorney General also relies, it is equally clear that Mr. Justice Stone did not intend that the federal courts abdicate their duty to protect the free flow of interstate commerce from undue burdens and obstructions pursuant to the commerce clause of the Constitution. In *Maurer*, as in *Barnwell*, considerable affirmative evidence was introduced to show Pennsylvania's need for the statute under attack:

> "* * * [t]here was extensive evidence tending to show that the transportation by appellants over the state highways of cars placed above the cab of the transporting vehicle is unsafe to the driver and to the public, the trial court found that the location of motor vehicles over the cab of the carrier rendered its operation dangerous on the curves and grades of the Pennsylvania highways." (309 U. S., at 600-601.)

Mr. Justice Stone further summarized additional findings of fact in the *Maurer* case (309 U. S. at 601) before concluding that in that case there was no undue burden on commerce.

So too in *Sproles* v. *Binford*, 286 U. S. 374, the Supreme Court gave considerable attention to the comprehensive findings of the District Court establishing "according to the special requirements of local conditions" (286 U. S. at 390) the need for, and the reasonableness of, the particular size and weight limitations involved, before concluding as a matter of law that there was no undue burden upon interstate commerce.

The twenty years which have elapsed since the decision

in the *Barnwell* case have demonstrated the increasing national interest in interstate commerce by motor carrier which makes unthinkable the sweeping abdication of federal authority which appellants have attempted to read into that decision. The Supreme Court's appreciation of this national interest is demonstrated by its recent decision in *Castle* v. *Hayes Freight Lines*, 348 U. S. 61, holding invalid another purported Illinois safety regulation when applied to interstate trucking on the ground of conflict with the policies and objectives of the Interstate Commerce Act. It is also noteworthy that the national interests protected in the *Hayes Freight Lines* case were exactly the same as those which are seriously threatened by the present Illinois law, namely, interstate motor carrier operations which are carried on under certificates of convenience and necessity issued by the Interstate Commerce Commission. It is true, of course, that the Commission could go further under the Interstate Commerce Act and prescribe the exact type of equipment required for the prevention of splash by motor carriers, just as the Commission could, and, in fact, eventually did prescribe the governing rule with respect to the length of trains operating in interstate commerce. However, the Commission has been understandably reluctant to prescribe the exact type of equipment to be used by interstate motor carriers so long as there are no pressing safety considerations demanding a particular type and so long as existing state requirements do not seriously burden the efficient operation of interstate commerce.

Clearly, the situation presented here is no different than that typically presented to a federal court when it is called upon to determine whether a particular state enactment creates an undue burden upon or actually obstructs interstate commerce. In such a situation, the Court could always

avoid its own responsibilities by adopting appellants' view and holding that if the burden and obstruction should get serious enough Congress could step in and provide a uniform rule. However, as Mr. Justice Stone so aptly said in the *Southern Pacific* case,

> "For a hundred years it has been accepted constitutional doctrine that the commerce clause, without the aid of Congressional legislation, thus affords some protection from state legislation inimical to the national commerce."

There being no rule of the Interstate Commerce Commission with respect to the exact type of splash guards which must be used, it is the clear duty of the federal courts to do as the District Court has done in this case—determine whether a particular state requirement is so unwarranted by legitimate safety considerations and so inimical to national commerce as to require a determination of invalidity.

CONCLUSION.

The District Court's unanimous and undisputed finding of fact that Illinois' exclusive requirement of the "contour splash guard", as specifically described in the statute, makes no unique contribution to the safety of highway operations, coupled with the further unanimous finding, amply supported by more specific findings, that it places a "tremendous" burden upon and direct obstruction to interstate commerce by motor carrier, is decisive of this entire controversy. Under such circumstances, this Court has already ruled on numerous occasions that it is the obligation of the federal courts to hold such a statute invalid as an undue burden upon interstate commerce. The

District Court's judgment and decree should therefore be affirmed without further argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, David Axelrod, one of counsel for appellees herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on or before the 9th day of July, 1958, I served copies of the foregoing Motion to Affirm on Appellants, as follows:

By mailing five copies of said Motion to Affirm to

Latham Castle,
Attorney General of the State of Illinois,
160 North LaSalle Street, Suite 900,
Chicago (1), Illinois

in a duly addressed envelope, postage prepaid.

DAVID AXELROD,
One of the Counsel for Appellants.

3

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1957

No. 1060

JOSEPH D. BIBB, Director of the Department of Public Safety of the State of Illinois, *et al.*,

Appellants,

vs.

NAVAJO FREIGHT LINES, INC., a New Mexico corporation, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DISTRICT.

APPELLANTS' BRIEF IN OPPOSITION TO APPELLEES' MOTION TO AFFIRM (CERTIFICATE OF SERVICE).

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1957.

No. 1060

JOSEPH D. BIBB, Director of the Department of Public Safety of the State of Illinois, *et al.*,

Appellants,

vs.

NAVAJO FREIGHT LINES, INC., a New Mexico corporation, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DISTRICT.

APPELLANTS' BRIEF IN OPPOSITION TO APPELLEES' MOTION TO AFFIRM.

I.

Appellees' motion to affirm does not overcome appellants' demonstration that the act involved does not unconstitutionally burden interstate commerce and is within the police power of the State.

The appellees' motion to affirm begs rather than states "the only issue presented by this appeal" in the following language at page 4 of that motion:

"Simply stated, the only issue presented by this appeal is whether or not a Federal Court has the power, indeed the duty, under Article I, Sec. 8 of the Constitution of the United States, to protect the free flow of commerce by holding unconstitutional a state statute which clearly places a substantial burden and obstruction upon the free flow of interstate commerce with absolutely no compensating local benefits."

The requirements of the statute (Ill. Rev. Stat. 1957, Ch. 95½, Par. 218 (b) Vol. II, p. 724) reprinted in full in Appellants' Jurisdictional Statement does not place "a substantial burden and obstruction upon the free flow of interstate commerce with absolutely no compensating local benefits."

The evidence summarized in the Jurisdictional Statement is that a contour splash guard, unlike a "flat" or "apron" type mud guard, will throw debris down instead of straight out (Rec. 322). When one is driving behind a unit that has inadequate splash guards, mud and water is thrown all over the windshield of a following vehicle with momentary loss of vision. When one loses vision he drops the left side of his car off the paved area of the road and many accidents are caused by trying to right the car from such rolling (Rec. 325).

The evidence is uncontradicted that contour splash guards prevent mud and water from splashing upon and obstructing stop and flicker lights and license plates (Rec. 340).

Appellees' Motion to Affirm does not avoid the teachings of *South Carolina Highway Department* v. *Barnwell Bros., Inc.*, 303 U. S. 161, *Maurer* v. *Hamilton*, 309 U. S. 598, *Sproles* v. *Binford*, 286 U. S. 374, and other pertinent authorities in their incisive application to the instant case.

All of these cases are discussed in Appellants' Jurisdictional Statement at pages 10 through 13.

The Act stricken down by the district court in this case is a reasonable exercise of the State's police power, as is demonstrated in Appellants' Jurisdictional Statement, and is therefore proof against appellees' attacks upon it.

It not being the office of a brief in reply to a motion to affirm to canvass the case at large, we restrict this reply brief to the considerations developed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, William C. Wines, one of counsel for appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on or before the 16th day of July, 1958, I served copies of the foregoing Appellants' Brief in opposition to Appellees' Motion to affirm as follows:

By mailing of five copies of said Jurisdictional Statement to

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in duly addressed envelopes, postage prepaid.

WILLIAM C. WINES,
One of Counsel for Appellants.

4

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1957.

No. 1060 94

JOSEPH D. LOHR, Director of the Department of Public Safety of the State of Illinois, *et al.*,

Appellants,

vs.

NAVAJO FREIGHT LINES, INC., a New Mexico corporation, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION.

BRIEF OF APPELLANTS PRESENTING LATE AUTHORITY UNDER THIS COURT'S RULE 41, PAR. 5

CERTIFICATE OF SERVICE

APPENDIX

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INDEX.

Table of Cases and Authorities Cited.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1957.

No. 1060

JOSEPH D. BIBB, Director of the Department of Public Safety of the State of Illinois, *et al.*,

Appellants,

vs.

NAVAJO FREIGHT LINES, INC., a New Mexico corporation, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION.

BRIEF OF APPELLANTS PRESENTING LATE AUTHORITY UNDER THIS COURT'S RULE 41, PAR. 5.

On September 18, 1958, the Supreme Court of Illinois decided *Rudolph Express Co.* v. *Bibb*, not yet reported, that Court's Docket No. 34819, opinion reprinted in full, Appendix 1. The court unanimously sustained as reasonable and constitutional the Illinois Mudguard Act, as amended in 1957 (Ill. Rev. Stats. 1957, Ch. 95½, Par. 218 (b), Vol. II, p. 724, reprinted in full, *Appellants' Jurisdictional Statement*, pp. 3-6), which is the Act held invalid by the district court in this case.

The pertinency of that opinion in the light of *People* v. *Warren*, 11 Ill. 2d 420, which sustained the Act in its 1955

form, is suggested in this supplemental brief and it is demonstrated that there is a direct conflict of authorities as to the constitutionality of the 1957 Act arising from the contrariety of decision between the district court's decision in the instant case, on the one hand, and the *Rudolph Express Company* case and the *Warren* case on the other hand.

I.

RUDOLPH EXPRESS COMPANY V. BIBB, NOT YET REPORTED, REPRINTED IN FULL, APPENDIX I OF THIS BRIEF, READ IN THE LIGHT OF PEOPLE v. WARREN, 11 ILL. 2d 420, PROPERLY SUSTAINED THE REASONABLENESS AND CONSTITUTIONALITY OF THE ILLINOIS MUDGUARD ACT OF 1957.

In *Rudolph Express Company* v. *Bibb*, not yet reported, reprinted in full, Appendix I to this brief, the Supreme Court of Illinois had before it an attack upon the reasonableness of the classifications of vehicles that were subjected to and the vehicles that were exempted from the Act.

In *People* v. *Warren*, 11 Ill. 2d 420, the court had sustained the 1955 version of the Act.

In the *Rudolph Express Company* case the court, taking cognizance of but declining to follow the court in *Navajo Freight Lines, Inc.* v. *Bibb*, 159 F. Supp. 385, said:

> "It is true that some of the enumerated vehicles fall readily into two categories suggested by the defendants; (1) the vehicle makes only occasional use of State highways and it would be impractical to require a permanent splash guard of the kind specified when no guards at all are required on the vehicle during most of its use, and (2) the normal operation of the vehicle would cause repeated damage to the specified splash guard. But if we are to assume that the legislature intended to exclude from compliance those vehicles which

make only occasional use of State highways, it is difficult to see why the specified splash guard should be required on foreign vehicles passing through this State. (See *Navajo Freight Lines, Inc.* v. *Bibb*, 159 F. Supp. 385.) And no basis has been suggested to support the distinction which is drawn between the vehicle 'used primarily in public construction.' There are other disparities which need not be enumerated. In our opinion the trial court properly held the added paragraph invalid."

The court further said:

"The plaintiffs have asked that we reconsider the validity of a portion of the section which was sustained in *People* v. *Warren*, 11 Ill. 2d 420, and was not changed by the 1957 amendment. After examining the points and authorities cited by the plaintiffs, we see no reason to modify our decision in *People* v. *Warren*."

In *People* v. *Warren*, 11 Ill. 2d 420, the court held reasonable and valid the 1955 version of the Mudguard Act (Ill. Rev. Stats. 1955, Ch. 95½, Par. 218 (b), Vol. 2, p. 266), which provided, as does the 1957 Act, which was in substance identical with the 1957 Act except that, in the language of the court in the *Rudolph Express Company* case "Certain minor changes in the design of the desired contour guards were made by the 1957 amendment. Their purpose appears to have been to make compliance easier in some particulars," and except that the 1957 Act exempted "motor vehicles which do not have more than 2 axles and which are used primarily in agricultural pursuits."

No question of the reasonableness of the exemptions is before this Court in the instant case and hence these exemptions are not considered in detail in this brief.

In the *Warren* case the Supreme Court said (11 Ill. 2d) at page 426:

"In the present case plaintiff in error does not question the right of the legislature to provide for and reg-

ulate the use of splash guards on motor vehicles. He poses only the question whether the legislature has properly exercised its power by the adoption of the section of the statute under attack in its present form. Tested by the rules of constitutional interpretation alluded to above, we find no merit in the contention that the provisions of that section are unreasonable, arbitrary and capricious. The splashing of water or mud upon the windshields of other vehicles on the road is an evil which the legislature rightfully aims to correct. We can give no weight to the contention of the plaintiff in error that the 'mud flaps' which were required upon all trucks under the 1951 statutes are to be preferred as more simple and inexpensive. It is within the power of the legislature to solve safety problems, by whatever means it deems best, so long as such means reasonably tend to correct the evil. *Since this police regulation is fairly appropriate to the expressed purpose of the statute, it is immaterial so far as the court is concerned, whether it is the best possible means or is inferior to the 1951 enactment which it supplants.*" (Emphasis supplied.)

The *Warren* case, adhered to in the *Rudolph Express Company* case, embodied the pronouncement of the Supreme Court of Illinois that the Illinois Mudguard Act as it stood in 1955 and as it stands now is a reasonable exercise of the police power.

To be sure, neither in the *Rudolph Express Company* case nor the *Warren* case did the court specifically consider vehicles moving only in interstate commerce. But the question of reasonableness is the same whether vehicles involved move in interstate or intrastate commerce.

II.

THERE IS A DIRECT CONFLICT OF AUTHORITY BETWEEN THE DISTRICT COURT'S DECISION IN THE INSTANT CASE AND THE DECISION OF THE SUPREME COURT OF ILLINOIS IN THE RUDOLPH EXPRESS COMPANY CASE, WHICH ADHERES TO THE WARREN CASE.

It is manifest that there is a direct conflict of authority between the district court's decision in the instant case and the decision of the Illinois Supreme Court in the *Rudolph Express Company* case, not yet reported, reprinted in full, Appendix I, which applies to the 1957 Act, that court's holding in the *Warren* case. The District Court held in the instant case that the Act is unreasonable and invalid. The *Rudolph* and *Warren* cases hold it reasonable and valid.

CONCLUSION.

For the reasons urged in the Jurisdictional Statement and in this Supplemental Brief, it is respectfully submitted that probable jurisdiction in this cause should be noted and that the judgment of the district court should be reversed.

Respectfully submitted,

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APPENDIX I.

Docket No. 34819—Agenda 55—May, 1958.

The Rudolph Express Co. *et. al.*, Appellees, *vs.* Joseph D. Bibb, Director of Public Safety, *et al.*, Appellants.

MR. JUSTICE SCHAEFER delivered the opinion of the court:

In *People* v. *Warren*, 11 Ill. 2d 420, we sustained the validity of section 121.02 of the Uniform Act Regulating Traffic on Highways, as amended in 1955. (Ill. Rev. Stat. 1955, chap. 95½, par. 218(b).) That section required that the rear wheels of motor vehicles of the second division—those designed and used for pulling or carrying freight or for carrying more than seven passengers—be equipped with contour splash guards while being operated on State highways outside of the limits of cities, villages and incorporated towns. In 1957 the section was again amended, principally by exempting certain vehicles from its requirements. The validity of the section as amended is challenged in this case.

The plaintiffs are common and contract motor carriers of general commodities, household goods and livestock in intrastate and interstate commerce. Their complaint sought to restrain the defendants, who are public officials, from enforcing the statute. Both parties moved for summary judgment. The plaintiffs' motion was supported by affidavits; the defendants' was not. The circuit court of Sangamon County held the exemption provisions of the amendment invalid, and held also that their invalidity rendered the entire section invalid. It entered a decree for the plaintiffs, and the defendants appeal directly to this court.

As it stood when the *Warren* case was before this court, section 121.02 required that the vehicles to which it applied be equipped with rear-fender splash guards that would contour the wheel in such manner that the relationship of the inside surface of the splash guard to the tread surface of the tire or wheel would be relatively parallel, both laterally and across the wheel, at

least throughout the top ninety degrees of the rear 180 degrees of the wheel's surface. The curved surface was required to extend downward to ten inches from the ground. The splash guards were required to be wide enough to cover the full tread or treads of the tires and to be installed close enough to the tread surface of the tire or wheel to control the side-throw or wash of the bulk of the thrown material and keep it within a tangent not to exceed 15 degrees measured from a base line formed by the top height of the wheel. The splash guards could be constructed of flexible material, but they were required to be so attached that regardless of movement of the guards or the vehicles, the guards would retain their general parallel relationship to the tread surface of the tire under ordinary operating conditions.

Certain minor changes in the design of the required contour guard were made by the 1957 amendment. Their purpose appears to have been to make compliance easier in some particulars. In any event, they do not concern us here because the circuit court held that these changes did not affect the validity of the section and the plaintiffs did not cross-appeal from that ruling.

The main controversy centers upon the validity of the following paragraph which was added to section 121.02 by amendment in 1957: "This Section shall not apply to motor vehicles which do not have more than 2 axles and which are used primarily in agricultural pursuits, nor to pole trailers, dump trucks, 'ready-mix' type of cement trucks, nor to trucks used primarily for transporting grain which are dumped or unloaded by use of hoists or lifts, nor to vehicles operated principally off the highways of this state and used primarily in public construction or for purposes associated with or in aid of drilling, mining or otherwise severing of natural resources from their natural depository nor to motor vehicles operated principally within the corporate limits of a city, village or incorporated town or within a short radius thereof; provided, the Department of Public Safety may, in order to promote greater safety on the highways of this State and accomplish the purposes of this Section, adopt and promulgate reasonable rules and regulations establishing

specifications or designs for splash guards, other than the contour type of splash guard hereinbefore specified, to be used on the vehicles mentioned in this paragraph while said vehicles are operated on the highways of this State. In adopting or promulgating any such rules or regulations, the Department of Public Safety shall consider, among other things, the type of vehicle, the design or construction of the vehicle, the purpose or purposes for which the vehicle is used, the conditions or circumstances under which the vehicle operates and the distance the vehicle travels upon the highways of this State." Ill. Rev. Stat. 1957, chap. 95½, par. 218(b).

The principal question to be determined is whether this added paragraph sets up arbitrary, capricious and unreasonable classifications, in violation of section 22 of Article IV and section 14 of article II of our constitution, and the 14th amendment to the Federal constitution. Defendants maintain that the classification is reasonable and does not offend constitutional guarantees. Plaintiffs contend that the classification is discriminatory and is unrelated to the purpose of the statute, and therefore unconstitutional. No question is raised under the commerce clause of the Federal constitution.

Section 22 of article IV prohibits the General Assembly from passing any local or special law granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever. This provision, like the equal protection clause of the 14th amendment to the Federal constitution, is designed to prevent arbitrary discrimination. (*Hansen* v. *Raleigh*, 391 Ill. 356; *Michigan Millers Fire Ins. Co.* v. *McDonough*, 358 Ill. 575.) It does not prohibit legislative classification, but it does require that the classification rest on a reasonable basis and apply uniformly to all members of the class on which it operates. *City of Chicago* v. *Willett Co.*, 1 Ill. 2d 311; *Father Basil's Lodge, Inc.* v. *City of Chicago*, 393 Ill. 246.

The apparent legislative purpose of section 121.02 is to prevent or minimize the splashing of mud or water upon the windshields of other motor vehicles by vehicles of the second division while they are on State highways

outside of incorporated areas. The paragraph in question unmistakably requires that one group of those vehicles be equipped with specifically described splash guards, and provides that a second large group need not be so equipped. In support of their contention that the classification is unreasonable, plaintiffs submitted to the trial court the affidavits of two experts who asserted that many of the enumerated vehicles would cause as much or more splash than those not enumerated. For example, it is asserted that the tires of a two-axle vehicle used primarily in agricultural pursuits will splash as much mud and water on a wet highway as those of a similar vehicle used primarily in manufacturing or commercial pursuits. It is unnecessary to discuss the affidavits in detail, because the defendants conceded in their argument before this court that there is no difference in general between the splash propensities of the enumerated vehicles and those which are not enumerated.

The defendants argue, however, that the statute is to be read as requiring that all vehicles of the second division must be equipped with splash guards, although those enumerated can use a type of guard prescribed by the Department of Public Safety instead of the type prescribed by the statute. In other words, they contend that the only classification that is made relates to the type of splash guard required, and that the added paragraph should not be construed as exempting the enumerated vehicles from anti-splash measures. The statute does not support this contention. It provides that the Department "may" promulgate rules and regulations establishing specifications or designs for other types of splash guards. The language is permissive, and the Department has apparently so construed it, for it is not suggested that any rules or regulations relating to this subject have been adopted.

We read the statute, therefore, as providing that all vehicles of the second division, except those enumerated in the added paragraph, must be equipped with the guard prescribed by the statute. The enumerated vehicles may be required to have a different type of guard only if the Department sees fit to so require. We are

unable to conclude that the classification thus prescribed is reasonable.

It is true that some of the enumerated vehicles fall readily into two categories suggested by the defendants: (1) the vehicle makes only occasional use of State highways and it would be impractical to require a permanent splash guard of the kind specified when no guards at all are required on the vehicle during most of its use, and (2) the normal operation of the vehicle would cause repeated damage to the specified splash guard. But if we are to assume that the legislature intended to exclude from compliance those vehicles which make only occasional use of State highways, it is difficult to see why the specified splash guard should be required on foreign vehicles passing through this State. (See *Navajo Freight Lines, Inc.* v. *Bibb*, 159 F. Supp. 385.) And no basis has been suggested to support the distinction which is drawn between the vehicle "used primarily in public construction" and the vehicle used primarily in private construction. There are other disparities which need not be enumerated. In our opinion the trial court properly held the added paragraph invalid.

The next question is the effect of this determination on the other five paragraphs of section 121.02. There are no very reliable clews as to the legislative intent. The statute as enacted in 1935 contained a savings clause (Ill. Rev. Stat. 1957, chap. 95½, par. 239), but we are unable to draw from that fact any significant conclusion as to the intention of the General Assembly in enacting the 1957 amendment. That the General Assembly was not entirely satisfied with the section as enacted in 1955 is apparent from the adoption of the 1957 amendment. We cannot say, however, that that dissatisfaction indicated a purpose to repeal the original enactment if the added material was held invalid. The legislature intended in 1955 that the act should be operative without the invalid exemptions. There has been no clearly expressed intention to repeal the 1955 provision and we see no significant indications that would support a repeal by implication. (*People ex rel. Akin* v. *Butler Street Foundry and Iron Co.*, 201 Ill. 236,

258; *Frost* v. *Corporation Commission of Oklahoma*, 278 U. S. 515, 525-7, 73 L. ed. 483, 490; II Sutherland Statutory Construction, 3d ed. 1943, sec. 2412.) The exemption provisions of the 1957 amendment are clearly separable from those provisions of the amendment which relate to the design of the required guard.

The plaintiffs have asked what we reconsider the validity of a portion of the section which was sustained in *People* v. *Warren*, 11 Ill. 2d 420, and was not changed by the 1957 amendment. After examining the points and authorities cited by the plaintiffs, we see no reason to modify our decision in *People* v. *Warren*.

From what has been said it follows that the trial court erred in restraining the defendants from enforcing section 121.02. The decree is reversed, and the cause is remanded for the entry of a decree in accordance with this opinion.

Reversed and remanded, with direction.

CERTIFICATE OF SERVICE.

I, William C. Wines, a member of the bar of this Court and an Assistant Attorney General of the State of Illinois, hereby certify that on the 26th day of September, 1958, I served five copies of the above brief on

David Axelrod, Jack Goodman, Carl L. Steiner, Arnold L. Burke,
39 S. La Salle St., Chicago 3, Illinois, and
Max Stephenson,
308 East Adams St., Springfield, Illinois,

by mailing the same to them, sufficient postage prepaid, at their addresses of record as shown above.

.....

WILLIAM C. WINES,
Assistant Attorney General of the State of Illinois

5

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1958

No. 94

JOSEPH D. EIBR, Director of the Department of Public Safety of the State of Illinois, and WILLIAM H. MORRIS, Superintendent of the Division of State Highway Police, Department of Public Safety of the State of Illinois,

Appellants,

vs.

NAVAJO FREIGHT LINES, INC., a New Mexico corporation, RINGSBY TRUCK LINES, INC., a Nebraska corporation, PRUCKA TRANSPORTATION, INC., a Nebraska corporation, DENVER-CHICAGO TRUCKING CO., INC., a Nebraska corporation, WATSON BROS. TRANSPORTATION CO., INC., a Nebraska corporation, PACIFIC INTERMOUNTAIN EXPRESS CO., a Nevada corporation, ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas corporation, and SCHERER FREIGHT LINES, INC., an Illinois corporation,

Appellees.

(APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION.)

BRIEF FOR APPELLANTS

Certificate of Service Appended at Page 20.

LATHAM CASTLE,
Attorney General of the State of Illinois,
160 North La Salle Street, Suite 900,

INDEX

APPENDICES.

CASES AND STATUTES CITED.

IN THE

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(APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION.)

BRIEF FOR APPELLANTS.

REFERENCE TO THE REPORT OF THE OPINION DELIVERED IN THE DISTRICT COURT.

The opinion of the statutory three-judge district court is reported as *Navajo Freight Lines, Inc.* v. *Bibb*, 159 F. Supp. 385, and is printed in full as Appendix I to this brief, App. pp. 1 to 16, *post*.

STATEMENT OF THE GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED.

The Statutory Provision Conferring on this Court Jurisdiction of This Appeal.

This appeal is taken pursuant to Section 1253 of the Judicial Code (28 U. S. C. Sec. 1253, Act of June 25, 1945, C. 646, 62 Stats. 926), which authorizes direct appeals to this Court from judgments of injunction by three-judge district courts.

Cases Believed to Sustain the Jurisdiction of This Court.

Cases believed to sustain the jurisdiction of this Court are:

Maurer v. *Hamilton*, 309 U. S. 598, 603.
South Carolina Highway Dept. v. *Barnwell Bros.*, 303 U. S. 177, 190, 191.
Sprolès v. *Binford*, 286 U. S. 374.

The decree was dated March 10, 1958, and was entered March 19, 1958 (Rec. 312-313).

The notice of appeal, with certificate of service, was filed on May 8, 1959, within sixty days after the date of the signing and entering of the decree in the United States District Court for the Southern District of Illinois, Southern Division, which court then had custody of the record in the case.

The Text and Citation of the Statute Involved.

The validity of the following statutory provisions of the State of Illinois is involved:

218b. Rear fender splash guards.] § 121.02. It is unlawful for any person to operate any motor vehicle of the second division upon the highways of this state outside the corporate limits of a city, village or incorporated town unless such vehicle is equipped with rear fender splash guards which shall comply with the specifications hereinafter provided in this Section; except that any motor vehicle of the second division which is or has been purchased, new or used, prior to August 1, 1957 shall be equipped with rear fender splash guards which are so attached as to prevent the splashing of mud or water upon the windshield of other motor vehicles and such splash guards on such vehicle shall not be required to comply with the specifications hereinafter provided in this Section until January 1, 1958.

The rear fender splash guards shall contour the wheel in such a manner that the relationship of the inside surface of any such splash guard to the tread surface of the tire or wheel shall be relatively parallel, both laterally and across the wheel, at least throughout the top 90 degrees of the rear 180 degrees of the wheel surface; provided however, on vehicles which have a clearance of less than 5 inches between the top of the tire or wheel and that part of the body of the vehicle directly above the tire or wheel when the vehicle is loaded to maximum legal capacity the curved portion of the splash guard need only extend from a point directly behind the center of the rear axle and to the rear of the wheel surface upwards to within at least 2 inches of the bottom line of the body when the vehicle is loaded to maximum legal capacity. On all vehicles to which this Section applies, there shall be a downward extension of the curved surface which shall end not more than 10 inches from the ground when the vehicle is loaded to maximum legal capacity. This downward extension shall be part of the curved surface or

attached directly to said curved surface, but it need not contour the wheel.

The splash guards shall be wide enough to cover the full tread or treads of the tires being protected and shall be installed not more than 6 inches from the tread surface of the tire or wheel when the vehicle is loaded to maximum legal capacity. The splash guard shall have a lip or flange on its outside edge to minimize side throw and splash. The lip or flange shall extend toward the center of the wheel, and shall be perpendicular to and extend not less than 2 inches below the inside or bottom surface line or plane of the guard.

The splash guards may be constructed of a rigid or flexible material, but shall be attached in such a manner that, regardless of movement, either by the splash guards or the vehicle, the splash guards will retain their general parallel relationship to the tread surface of the tire or wheel under all ordinary operating conditions.

This Section shall not apply to motor vehicles whose construction or design does not require such splash guards, nor to motor vehicles in-transit and capable only of using temporary splash guards approved by the Illinois State Highway Police.

This Section shall not apply to motor vehicles which do not have more than 2 axles and which are used primarily in agricultural pursuits, nor to pole trailers, dump trucks, "ready-mix" type of cement trucks, nor to trucks used primarily for transporting grain which are dumped or unloaded by use of hoists or lifts, nor to vehicles operated principally off the highways of this state and used primarily in public construction or for purposes associated with or in aid of drilling, mining or otherwise severing of natural resources from their natural depository nor to motor vehicles operated principally within the corporate limits of a city, village or incorporated town or within a short radius thereof; provided, the Department of Public Safety may, in order to promote greater safety on the highways of this State and accomplish the purposes of this Section, adopt and promulgate reasonable rules and regulations establishing specifications or designs

for splash guards, other than the contour type of splash guard hereinbefore specified, to be used on the vehicles mentioned in this paragraph while said vehicles are operated on the highways of this State. In adopting or promulgating any such rules or regulations, the Department of Public Safety shall consider, among other things, the type of vehicle, the design or construction of the vehicle, the purpose or purposes for which the vehicle is used, the conditions or circumstances under which the vehicle operates and the distance the vehicle travels upon the highways of this State. As amended by act approved July 8, 1957. L. 1957, p. 1951, H.B. No. 157.

Section added: L. 1951, p. 942.

THE QUESTIONS PRESENTED BY THIS APPEAL.

The questions presented by this appeal are:

A. Does Section 121.02 of Illinois' Act Regulating Traffic on Highways (Ill. Revised Stats. 1957, Chap. 95½, Par. 218b, Vol. 2, p. 724), requiring contact splash fenders or splash guards over and behind the rear wheels of certain motor trucks and trailers, unreasonably burden interstate commerce in violation of Article I, Section 8, of the Constitution of the United States, which provides as follows:

> "The Congress shall have power . . . to regulate commerce among the several States. . . ."

and Article IV, Clause 2, of the Constitution of the United States, which provides as follows:

> "This Constitution . . . shall be the supreme Law of the Land; and the judges in every State shall be bound thereby, and anything in the Constitution or Laws of any State to the contrary notwithstanding."?

B. Is the Act within the police power of the State of Illinois reserved to the States under the provisions of the Tenth Amendment to the Constitution of the United States?

STATEMENT OF THE CASE.

Appellees, corporations operating trucks with trailers in interstate commerce and in Illinois under certificates of public convenience and necessity issued by the Interstate Commerce Commission, filed this suit to restrain the enforcement of an Illinois statute enacted in 1957 which requires "contour" mud guards on trucks and trailers in Illinois. (Ill. Rev. Stat. 1957, Ch. 95½, Par. 218b, Vol. 2, p. 724, reprinted in full, *ante*, pp. 3-6). The Supreme Court of Illinois has sustained the 1957 Act here in question as a reasonable exercise of the police power. (*Rudolph Express Co.* v. *Bibb*, 15 Ill. 2d 67, opinion reprinted in full, App. VI, *post*, App. pp. 34-38). It had previously sustained the validity of a 1955 predecessor act (Ill. Rev. Stats. 1955, Ch. 95½, par. 218b, Vol. II, p. 226), which did not differ from the 1957 version of the Act in any respect drawn in question here. *People* v. *Warren*, 11 Ill. 2d 420, opinion reprinted in full, App. IV, *post*, App. pp. 25-31.

The specifications required by the statute are thus summarized by the District Court:

> "The Act under attack, entitled 'rear fender splash guards', provides:
>
> > "It is unlawful for any person to operate any motor vehicle * * * upon the highways of this state * * * unless such vehicle is equipped with rear fender splash guards which shall comply with the specifications hereinafter provided in this Section * * *".
>
> "The specifications require that the splash guards (1) contour under the wheel; (2) cover the top 90° of the rear 180° (excepting vehicles of less than five inches clearance, and requiring that they contour within ten inches of the body); (3) extend downward to within ten inches of the ground; (4) have a lip or flange of two inches upon the outside edge, and (5) retain its gen-

eral parallel condition under all operating conditions when mounted as required by the statute not more than six inches from the tread when fully loaded." (*Opinion*, Appendix I, p. 2.)

A three-judge District Court, having granted a temporary injunction restraining the enforcement of the statute, made that injunction permanent by final decree. (App. III, *post*, Rec. 312-313). The Court's memorandum of opinion (Rec. 290-306) appears as Appendix I to this Statement (App., pp. 1-16, *post*). That Court's Findings of Fact and Conclusions of Law (Rec. 306) appear as Appendix II (App., pp. 17-22). The decree appealed from (Rec. 562) appears as Appendix III (App., pp. 23-24).

In substance, the District Court found that compliance with the Act for vehicles used by appellees would cost each of them in excess of $3,000, that the Arkansas Public Service Commission has issued an order requiring that all vehicles using Arkansas highways be equipped with flat, apron type mudguards parallel to the rear axle, that it is impossible for a splash guard to comply with the Illinois Splash Guard Act and the Arkansas Public Service Commission order, that splash guards permitted in forty-five states are illegal in Illinois, that each of appellees interchanges trailers with carriers throughout the United States, that it will be impractical and in most cases impossible for plaintiffs to equip trailers with the splash guards required by Illinois and that the Act unreasonably burdens interstate commerce (Findings of Fact, Rec. 306-311, App. II, App. 17-22).

The District Court also found that if the contour type mudguards become detached from the vehicle upon which they are mounted, they create a hazard upon public highways (Rec. 559).

The District Court therefore found the Act an unreasonable burden on interstate commerce (Rec. 555).

The substance of appellees' evidence has been embodied in the District Court's findings of fact (Appendix II, pp. 306 to 311, *post*), and opinion (Appendix I, pp. 290 to 306, *post*), as summarized in the preceding paragraph. We do not repeat that summary.

The evidence for appellants, not summarized in the Court's opinion or reflected in its Findings of Fact, is that a plastic contour splash guard when backed into an object such as a loading ramp or post (Rec. 190), snaps back into position and is not damaged. Even when a plastic contour splash guard was subjected to ten times the vibration that you would get on the road, it was not damaged (Rec. 192).

A contour splash guard, unlike a "flat" or "apron" type mud guard, will throw debris down instead of straight out (Rec. 201, 222). When one is driving behind a unit that has inadequate splash guards, mud and water is thrown all over the windshield of a following vehicle with momentary loss of vision. When one loses vision he drops the side of his car off the paved area of the road and many accidents are caused by trying to right the car from such rolling (Rec. 203).

Contour splash guards prevent mud and water from splashing upon and obscuring stop and flicker lights and license plates (Rec. 213).

When the front vehicle is equipped with contour guards, a vehicle following can drive within twenty or thirty feet of the unit with no trouble in keeping the windshield clean (Rec. 222).

A captain of the Illinois State Highways Police testified that he knew of no accidents that had been caused by con-

tour splash guards (Rec. 222). He also testified that he knew of no accidents from the flat type of mudguards (Rec. 222).

The district court ignored the testimony of the defendants' witness Leonard Cooper, president of Precision Mold and Tool Corporation, vice president, secretary and treasurer of the Plastic Surface Corporation and a manufacturer of mudguards meeting the requirements of the Illinois statute involved in this case, (Rec. 182-3) who, asked as to whether the type of mudguard that he manufactures is "one that can be carried in the vehicle and readily put on, say, at a state border, and then removed as it leaves Illinois," testified from personal experience that a mechanic who had no prior experience of installing such mudguards on a trailer could install such mudguards on a single axle vehicle in one hour and that it would take "a little longer" to mount such mudguards on a two-axle vehicle. (Rec. 191.)

ARGUMENT.

I.

The Illinois Mudguard Act is a reasonable exercise of Illinois' police power over her highways. It is therefore valid even though it imposes a burden on interstate commerce.

The District Court has stricken down a measure enacted by Illinois for the prevention of accidents on that State's highways. There is no doubt as to the general principles of constitutional law that must govern this case.

The first of the principles is that a State may adopt reasonable means for the protection of life, limb and property within its borders even though such measures entail a substantial burden upon interstate commerce. More particularly, a State may enact reasonable regulations of the type and equipment of vehicles, including motor trucks, traveling upon the State's highways even though such vehicles move solely in interstate commerce and are of origins foreign to the State itself.

In *South Carolina Highway Department* v. *Barnwell Bros., Inc.*, 303 U. S. 161, this Court, overturning the decision of a three-judge district court, held valid the provisions of a South Carolina statute prohibiting the "use on state highways of motor trucks and 'semi-trailer motor trucks' whose width exceeds ninety inches, and whose weight including loads exceeds twenty thousand pounds."

The Court said at page 189:

> "The nature of the authority of the state over its own highways has often been pointed out by this Court. It may not, under the guise of regulation, discriminate against interstate commerce. But 'In the absence of

national legislation especially covering the subject of interstate commerce, the State may rightly prescribe uniform regulations adopted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens.' *Morris* v. *Duby*, 274 U. S. 135, 143. This formulation has been repeatedly affirmed, *Clark* v. *Poor*, 274 U. S. 554, 557; *Sprout* v. *South Bend*, 277 U. S. 163, 169; *Sproles* v. *Binford*, 286 U. S. 374, 389, 390; cf. *Morf* v. *Bingaman*, 298 U. S. 407, and never disapproved. This Court has often sustained the exercise of that power although it has burdened or impeded interstate commerce. It has upheld weight limitations lower than those presently imposed, applied alike to motor traffic moving interstate and intrastate. *Morris* v. *Duby, supra; Sproles* v. *Binford, supra.* Restrictions favoring passenger traffic over the carriage of interstate merchandise by truck have been similarly sustained, *Sproles* v. *Binford, supra; Bradley* v. *Public Utilities Comm'n*, 289 U. S. 92, as has the exaction of a reasonable fee for the use of the highways. *Hendrick* v. *Maryland*, 235 U. S. 610; *Kane* v. *New Jersey*, 242 U. S. 160; *Interstate Busses Corp.* v. *Blodgett*, 276 U. S. 245; *Morf* v. *Bingaman, supra*; cf. *Ingels* v. *Morf*, 300 U. S. 290."

In *Maurer* v. *Hamilton*, 309 U. S. 598, this Court sustained as to trucks traveling in interstate commerce a statute of Pennsylvania "prohibiting the operation over its highways of any motor vehicle carrying any other vehicle over the head of the operator of such carrier vehicle." The Court sustained this statute notwithstanding the Motor Carrier Act of 1935.

The Court said at pages 603-04:

"Only a word need be said of the constitutional objections. The present record lays a firm foundation for the exercise of state regulatory power, unless the state has been deprived of that power by Congressional action authorizing the Commission to substitute its judgment for that of the state legislature as to the need and propriety of the state regulation. The nature and

extent of the state power, in the absence of Congressional action, to regulate the use of its highways by vehicles engaged in interstate commerce has so recently been considered by this Court that it is unnecessary to review the authorities now, or to restate the standards which define the state power to prescribe regulations adapted to promote safety upon its highways and to insure their conservation and convenient use by the public. See *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177. Judged by these standards we can find no basis for saying that the Pennsylvania statute is not such a regulation or that it is a denial of due process or that it infringes the commerce clause if Congress has not authorized the Interstate Commerce Commission to promulgate a conflicting rule."

In *Sproles* v. *Binford*, 286 U. S. 374, this Court sustained as to trucks traveling in interstate commerce provisions of the Motor Vehicle Act of Texas prohibiting "the operation on any highway of 'any vehicle' as defined, exceeding stated limitations of size, or any vehicle not constructed or equipped as required, and also the transportation of any load exceeding the dimensions and weights prescribed." After holding that the Act did not deprive appellants of their proeprty without due process of law (no question of due process is raised in the instant case), the Court, speaking through Chief Justice Hughes, said at pages 389-90:

"The objection to the prescribed limitation as repugnant to the commerce clause is also without merit. The Court, in *Morris* v. *Duby*, *supra*, at p. 143, answered a similar objection to the limitation of weight by the following statement, which is applicable here: 'An examination of the acts of Congress discloses no provision, express or implied, by which there is withheld from the State its ordinary police power to conserve the highways in the interest of the public and to prescribe such reasonable regulations for their use as may be wise to prevent injury and damage to them. In the absence of national legislation especially covering the subject of interstate commerce, the State may rightly

prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens. In the instant case, there is no discrimination against interstate commerce and the regulations adopted by the State, assuming them to be otherwise valid, fall within the established principle that in matters admitting of diversity of treatment, according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act."

The Supreme Court of Illinois Has Sustained the Reasonableness of the Instant Measure.

In *People* v. *Warren*, 11 Ill. 2d 420, opinion reprinted in full, Appendix IV, pp. 25 to 31, *post*, the Supreme Court of Illinois considered the Illinois Mudguard Act in its 1955 form (Ill. Rev. Stat. 1955, Ch. 95½, Par. 218-b, Vol. II, p. 226).

The 1955 form of the Act did not differ substantially from the 1957 version of the Act as amended except that the 1957 version of the act make compliance easier in some particulars and to exempt "motor vehicles which do not have more than two axles which are used primarily in agricultural pursuits."

The 1955 version of the Illinois Mudguard Act (Ill. Rev. Stat. 1955, Ch. 95½, Par. 218-b, Vol. II, p. 226) is set forth in full as Appendix V to this brief (pp. 32 to 33, *post*). The effect of the amendments is summarized in the margin.[1]

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[1] The amendment makes the Act applicable only to "any new motor vehicle of the second division which is purchased on or after September 1, 1955, or any motor vehicle of the second division the splash guards of which have been replaced on and after September 1, 1955, which replacement shall be necessary when present splash guards are unable to prevent the splashing of mud or water upon the windshield of other motor vehicles, upon the highways * * *" outside the corporate limits "unless such vehicle is equipped with rear fender splash guards which shall comply with the specifications as hereinafter provided and such splash guards shall be so attached as to prevent the splashing of mud or water upon the windshield of other motor vehicles; provided, that on

Footnote continued on next page

The court said at page 426 (*People* v. *Warren*, 11 Ill. 2d 420):

"In the present case plaintiff in error does not question the right of the legislature to provide for and regulate the use of splash guards on motor vehicles. He poses only the question whether the legislature has properly exercised its power by the adoption of the section of the statute under attack in its present form. Tested by the rules of constitutional interpretation alluded to above, we find no merit in the contention that the provisions of that section are unreasonable, arbitrary and capricious. The splashing of water or mud upon the windshields of other vehicles on the road is

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and after January 1, 1957, this amendatory Act of 1955 shall apply to all motor vehicles of the second division."

The 1955 Act had the additional requirement, eliminated by the 1957 Act, that the mudguard must extend to a length that shall end "not more than 10 inches from the ground."

The 1957 Amendment provides that as to vehicles "which have a clearance of less than 5 inches between the top of the tire or wheel and that part of the body of the vehicle directly above the tire or wheel when the vehicle is loaded to maximum legal capacity, the curved portion of the splash guard need only extend from a point directly behind the center of the rear axle to the rear of the wheel surface upwards to within at least 2 inches of the bottom line of the body when the vehicle is loaded to maximum legal capacity."

The 1957 Act requires a downward extension of the curved surface which shall end not more than 10 inches from the ground when the vehicle is loaded to maximum legal capacity" but provides that while such extension "shall be part of the curved surface or attached directly to the curved surface," it "need not contour the wheel."

The 1955 Act required that the "splash guards shall be wide enough to cover the full trend [*sic*] or treads of the tires being protected and shall be installed close enough to the tread surface of the tire or wheel as to control the side-throw or wash of the bulk of the thrown road surface material and keep such bulk within a tangent not to exceed 15 degrees measured from a base line formed by the top height of the wheel."

The 1957 Act merely requires that the splash guards be wide enough to cover the full tread or treads of the tires being protected and shall be installed not more than 6 inches from the tread surface of the tire or wheel when the vehicle is loaded to maximum legal capacity. The splash guard shall have a lip or flange on its outside edge to minimize side throw and splash. The lip or flange shall extend toward the center of the wheel, and shall be perpendicular to and extend not less than 2 inches below the inside or bottom surface line or plane of the guard.

The splash guards may be constructed of a rigid or flexible material, but shall be attached in such a manner that, regardless of movement, either by the splash guards or the vehicle, the splash guards will retain

Footnote continued on next page

an evil which the legislature rightfully aims to correct. We can give no weight to the contention of the plaintiff in error that the 'mud flaps' which were required upon all trucks under the 1951 statutes are to be preferred as more simple and inexpensive. It is within the power of the legislature to solve safety problems, by whatever means it deems best, so long as such means reasonably tend to correct the evil. *Since this police regulation is fairly appropriate to the expressed purpose of the statute, it is immaterial so far as the court is concerned, whether it is the best possible means or is inferior to the 1951 enactment which it supplants.*" (Emphasis supplied.)

The reasonableness of the 1957 version of the Act, the version under attack in this case, was before the Supreme

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their general parallel relationship to the tread surface of the tire or wheel under all ordinary operating conditions.

This Section shall not apply to motor vehicles whose construction or design does not require such splash guards, nor to motor vehicles in transit and capable only of using temporary splash guards approved by the Illinois State Highway Police.

The 1957 Amendment enacts certain exemptions from the Act in question here.

That section is as follows:

This Section shall not apply to motor vehicles which do not have more than 2 axles and which are used primarily in agricultural pursuits, nor to pole trailers, dump trucks, "ready-mix" type of cement trucks, nor to trucks used primarily for transporting grain which are dumped or unloaded by use of hoists or lifts, nor to vehicles operated principally off the highways of this state and used primarily in public construction or for purposes associated with or in aid of drilling, mining or otherwise severing of natural resources from their natural depository nor to motor vehicles operated principally within the corporate limits of a city, village or incorporated town or within a short radius thereof; provided, the Department of Public Safety may, in order to promote greater safety on the highways of this State and accomplish the purposes of this Section, adopt and promulgate reasonable rules and regulations establishing specifications or designs for splash guards, other than the contour type of splash guard hereinbefore specified, to be used on the vehicles mentioned in this paragraph while said vehicles are operated on the highways of this State. In adopting or promulgating any such rules or regulations, the Department of Public Safety shall consider, among other things, the type of vehicle, the design or construction of the vehicle, the purpose or purposes for which the vehicle is used, the conditions or circumstances under which the vehicle operates and the distance the vehicle travels upon the highways of this State. 1935, July 9, Laws 1935, p. 1247, art. XV, § 121.02, added 1951, July 2, Laws 1951, p. 942, § 1, as amended 1955, July 15, Laws 1955, p. 2133, § 1; 1957, July 8, Laws 1957, p. ——, H. B. No. 157, § 1.

(Ill. Rev. Stat. 1957, Ch. 95½, Par. 218-b, Vol. II, p. 725).

Court of Illinois in *Rudolph Express Co.* v. *Bibb*, 15 Ill. 2d 67, reprinted in full as Appendix VI, pp. 34 to 38, *post*.

While the *Rudolph Express Company* case dealt principally with exemptions from the Act that are not challenged in this case but are summarized in the marginal note heretofore cited (1), the Supreme Court, reconsidering its opinion in the *Warren* case, said (15 Ill. 2d 76, at p. 82):

> "After examining the points and authorities cited by the plaintiffs, we see no reason to modify our decision in *People* v. *Warren*."

The Evidence sustains the Reasonableness and Validity of the Statute.

The defendants' evidence summarized in the Statement of the Case, *ante*, is that a contour splash guard, unlike a "flat" or "apron" type of mudguard will throw *debris* down instead of straight out (Rec. 201, 222) and will thus prevent its being hurled into faces of drivers passing the vehicle equipped with contour splash guards. Such contour splash guards will prevent also mud and water from being thrown upon the windshield of a following vehicle with momentary loss of vision (Rec. 222). When one thus loses vision, he tends to drop the side of his car off of the paved area of the road. Many accidents are caused by trying to right the car from such rolling (Rec. 203).

The evidence also shows that contour splash guards prevent mud and water from splashing upon and obscuring stop and flicker lights and license places (Rec. 213).

When the front vehicle is equipped with contour guards, a following vehicle can drive within twenty or thirty feet of the unit with no trouble in keeping the windshield clear (Rec. 222).

A captain of the Illinois State Highway Police testified that he knew of no accidents that had been caused by contour splash guards (Rec. 222).

It thus appears that the statute enacts a reasonable regulation of trucks on Illinois' highways well within the police power of that State reserved to it by the Tenth Amendment and that any burden that it imposes on interstate commerce is not such as to render it unconstitutional.

Appellees rely upon *Southern Pac. Co.* v. *Arizona*, 325 U. S. 761, which invalidated a statute of Arizona that prescribed a maximum length of 70 cars for trains moving within that State. But that case involved a railroad built and operated by private interests. It did not involve highways constructed by a State. The instant case involves only traffic moving upon State highways. Furthermore there was a substantial showing in the *Southern Pacific Company* case that shorter trains would mean more numerous trains and that the minimization in the number of accidents due to shorter trains would be more than offset by the increase in accidents caused by more numerous trains.

Appellees cite *Morgan* v. *Virginia*, 328 U. S. 373. In that case this Court struck down a statute of the State of Virginia that required "all passenger motor vehicle carriers, both interstate and intrastate, to separate without discrimination, the white and colored passengers in their motor busses so that contiguous seats will not be occupied by persons of different races at the same time." No question of preserving life or bodily safety was involved in the *Morgan* case.

Appellees also cite *Kelly* v. *Washington*, 302 U. S. 1. But in that case this Court *did not* strike down the state statute assailed, which was one enacting "a comprehensive code" regulating in the interests of safety vessels moving in Washington upon navigable waters and in interstate and foreign commerce. On the contrary, this Court, *reversing* a judgment of the State court invalidating the Act, remanded the

cause for further proceedings to be conducted with a view to ascertaining whether "standards as to structure, design, equipment and operation" of such vessels were such as to "pass beyond what is plainly essential to safety and seaworthiness".

The Court sustained provisions of the Act providing for State "inspection of hull and machinery of respondents' facilities in order to insure safety and seaworthiness."

The Court said at page 16:

> "Our conclusion is that the state Act has a permissible field of operation in relation to respondents' tugs and that the state court was in error in holding the Act completely unenforceable in deference to federal law."

It is, we think, highly significant that appellees do not cite a single case invalidating a State statute regulating vehicles on the State's highway where safety is the object of the statute.

Appellees have argued in their Motion to Affirm that regulations of the character of those embodied in the Illinois Act involved in this case, if they are to be adopted at all, are of such character that they should be uniform and hence should be imposed by Act of Congress or Federal administrative regulation authorized by congressional act. But such an argument, if sound, would have found countenance in this Court's decisions in *Maurer* v. *Hamilton*, 309 U. S. 598, already considered, sustaining a Pennsylvania regulation prohibiting the operation of motor vehicles carrying any other vehicle over the head of the operator, in *Sproles* v. *Binford*, 286 U. S. 374, sustaining an Act specifying limitations of size, type of equipment and maximum weight of loads with respect to trucks, and *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, already considered, sustaining a State act limiting the width of "motor trucks and 'semitrailer motor trucks' whose width

exceeds ninety inches, and whose weight including loads exceeds twenty thousand pounds."

Appellees point to a regulation of Arkansas that requires a flat type of mudguard. But, as we have noted in the Statement of the Case, *ante*, the defendants' evidence, ignored by the trial court, shows that mudguards of the type required by the Illinois statute can be installed at the border of Illinois by a mechanic without prior experience in an hour for a one-axle vehicle and slightly more than that for a two-axle vehicle. (Rec. 182-3.) To be sure, such installation will occasion some delay or about an hour or more. But delay is a small price to pay for the preserving of lives and the prevention of injuries upon the public highways.

These considerations demonstrate that the statute is a reasonable exercise of the State's police power, that the District Court has departed from the constitutional norms apposite to the questions presented, that it has made a legislative, not a judicial determination of those questions and that it has improperly granted the injunction appealed from.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, William C. Wines, one of counsel for appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on or before the 9th day of January, 1959, I served copies of the foregoing Brief for Appellants on Appellees, as follows:

By mailing of five copies of said Brief for Appellants to

Axelrod, Goodman and Steiner
39 South La Salle Street
Suite 703
Chicago 3, Illinois

Arnold Lloyd Burke
100 W. Monroe Street
Suite 1410
Chicago 3, Illinois

Stephenson and Routman
208 W. Adams Street
Springfield, Illinois

Harper, Harper and Young
Kelly Building
Ft. Smith, Arkansas

in duly addressed envelopes, postage prepaid.

WILLIAM C. WINES
One of Counsel for Appellants.

APPENDIX I.

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
SOUTHERN DIVISION

Navajo Freight Lines, Inc.,
a New Mexico corporation,
Ringsby Truck Lines, Inc.,
a Nebraska corporation,
Prucka Transportation, Inc.,
A Nebraska corporation,
Denver Chicago Trucking Co., Inc.,
A Nebraska corporation,
Watson Bros. Transportation Co., Inc.,
a Nebraska corporation and
Pacific Intermountain Express Co.,
a Nevada corporation,
Plaintiffs,

and

Arkansas-Best Freight System, Inc.,
an Arkansas corporation,
Intervenor,

vs.

Joseph D. Bibb, Director of the Department of Public Safety of the State of Illinois,

and

William H. Morris, Superintendent of the Division of State Highway Police, Department of Public Safety of the State of Illinois,
Defendants.

Civil Action
No. 2438
For Declaratory
Judgment and
Injunctive
Relief

February 26, 1958

Before MAJOR, Circuit Judge, BRIGGLE and MERCER, District Judges.

MAJOR, Circuit Judge. Plaintiffs instituted this proceeding, praying for a declaratory judgment that Sec. 121.02

of the Uniform Act Regulating Traffic on Highways, being Sec. 218b of Chap. 95½, as amended (Ill. Rev. Stat.), effective July 8, 1957 (hereinafter referred to as the Act), be held unconstitutional and void, and that defendants be enjoined from enforcing or instituting proceedings against plaintiffs under the Act. Arkansas-Best Freight System, Inc. was granted leave to intervene. The District Court issued a temporary restraining order.

On January 15, 1958, a three-Judge Court was convened in accordance with the requirements of Title 28 U. S. C. A. Sec. 2284. On January 15 and 16, 1958, the Court heard testimony offered by the respective parties, as well as argument of conusel, at the conclusion of which the matter was taken under advisement.

The Act under attack, entitled "Rear fender splash guards," provides:

> "It is unlawful for any person to operate any motor vehicle * * * upon the highways of this state * * * unless such vehicle is equipped with rear fender splash guards which shall comply with the specifications hereinafter provided in this Section * * *."

The specifications require that the splash guards (1) contour under the wheel; (2) cover the top 90° of the rear 180° (excepting vehicles of less than five inches clearance, and requiring that they contour within two inches of the body); (3) extend downward to within ten inches of the ground; (4) have a lip or flange of two inches upon the outside edge, and (5) retain its general parallel condition under all operating conditions when mounted as required by the statute not more than six inches from the tread when fully loaded.

Plaintiffs named in the caption are all corporations organized and existing under laws of states other than Illinois. They are all engaged in the transportation of property by motor vehicle as a common carrier in interstate commerce generally over regular routes. They all operate pursuant to a certificate of public convenience and necessity issued by the Interstate Commerce Commission. None of the plaintiffs other than Watson Bros. rendered any intrastate transportation in Illinois and hold no authority from the Illinois Commerce Commission to operate in such commerce. Watson Bros. operates to a limited extent in intrastate com-

merce in Illinois, for which it holds authority from the Illinois Commerce Commission.

Joseph D. Bibb is director of the Department of Public Safety of the State of Illinois, which department maintains the division known as the State Highway Police, of which defendant William H. Morris is Superintendent. These officials are charged with the duty and responsibility of enforcing the provisions of the Uniform Act Regulating Traffic on Highways, including the section involved in this proceeding.

Notwithstanding our findings of fact and conclusions of law entered concurrently with this opinion, we deem it advisable to elaborate on the factual as well as the legal situation. Navajo Freight Lines, Inc. (hereafter Navajo) is a New Mexico corporation with its principal office at Denver, Colorado. It operates between points in the states of Arizona, California, Colorado, Illinois, Indiana, Iowa, Kansas, Missouri, Nebraska, Nevada, New Mexico Oklahoma and Texas. It operates approximately 32 million miles per year in interstate commerce, with 7% of its mileage over Illinois highways. Ringsby Truck Lines, Inc. (hereafter Ringsby) is a Nebraska corporation and operates between points in the states of California, Colorado, Illinois, Iowa, Kansas, Missouri, Nebraska, Nevada, Utah and Wyoming. It operates approximately 30 million miles per year in interstate commerce, of which 3% is over Illinois highways. Prucka Transportation, Inc. (hereafter Prucka) is a Nebraska corporation and operates between points in the states of Colorado, Illinois, Indiana, Iowa, Kansas, Missouri, Nebraska and Wyoming. It operates approximately 5 million miles per year in interstate commerce, of which 5% is over Illinois highways. Denver Chicago Trucking Co., Inc. (hereafter Denver) is a Nebraska corporation operating between points in the states of Arizona, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Kansas, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Utah, Washington and Wyoming. It operates approximately 57 million miles per year in interstate commerce, of which approximately 4% is over Illinois highways. Watson Bros. Transportation Co., Inc. (hereafter Watson) is a Nebraska corporation and operates between points in the states of Arizona, California, Colorado, Illinois, Iowa,

Kansas, Minnesota, Missouri, Nebraska, New Mexico, and Wyoming. It operates approximately 58 million miles per year in interstate commerce, of which 7% is over Illinois highways. Pacific Intermountain Express Co. (hereafter Pacific) is a Nevada corporation and operates between points in California, Colorado, Idaho, Illinois, Indiana, Kansas, Missouri, Montana, Nevada, Oregon, Utah, Washington and Wyoming. It operates approximately 90 million miles per year, of which 3% is over Illinois highways.

Each of the plaintiffs is at present operating its trailers with what is termed the conventional or straight mud or splash guard which is recognized as legal in all the forty-eight states other than Illinois. Each of the plaintiffs, in order to operate in Illinois, will be required to equip its trailers with the contour type splash guard required by the Illinois Act, the cost of which is $30 or more per vehicle. Navajo will be required to make such installation on approximately 733 trailers, at a cost of $21,990; Ringsby, on approximately 468 trailers, at a cost of $14,040; Prucka, on approximately 150 trailers, at a cost of $4,500; Denver on approximately 750 trailers, at a cost of $22,500; Watson, on approximately 1528 trailers, at a cost of $45,840; Pacific, on approximately 1200 trailers, at a cost of $36,000. Moreover from two to four hours of labor are required to install or remove a contour splash guard. The expense incident to maintenance and replacement is heavy.

The service rendered by plaintiffs requires that they interchange trailers, and for many years this has been the practice. For example, a carrier which serves between Portland, Oregon and Denver, Colorado, will handle and originate a trailer load of perishable commodities destined for Chicago. The original carrier will move the trailer from Portland to Denver and then deliver it, without transferring the load, for movement to destination via any one of the plaintiffs herein. This interchange service constitutes a substantial proportion of the transportation business of each of the plaintiffs, ranging from 30% to 65%. For example, in the year 1956, the revenue derived by Pacific from traffic which moved through its Chicago terminal amounted to approximately $3,182,000. The revenue derived by Watson for the month of May, 1957, moving through its Chicago terminal, amounted to approximately $1,000,000, of which more than one-third was on traffic

moved into the Chicago terminal from points outside of the state of Illinois. It derived revenue in the same month from freight moving through its Peoria, Illinois, terminal of approximately $107,000, of which about one-third was from freight moving into Peoria from points outside of the state of Illinois. Other plaintiffs received comparable revenue from interchange traffic passing through Illinois.

This interchange of traffic is necessary and essential for the efficient and prompt service which plaintiffs are required to render. More than that, a considerable portion of the service required of plaintiffs could not otherwise be rendered. For instance, plaintiffs render transportation service to the United States Government, including the transportation of explosives which are required to be handled in sealed trailers which cannot be opened until delivered. This service in the main could not be rendered absent the ability of the originating carrier to interchange with other carriers. Plaintiffs also carry substantial amounts of commodities which because of their nature, such as their size or weight, or because they are perishable, cannot be physically transferred from one trailer to another without damage and delay. Again, proper service can be rendered only because plaintiffs are able to interchange trailers, carrying such shipments, with other carriers which are authorized to complete the journey to the point of the shipment's destination. More than that, many shippers and consignees specify in their bills of lading that the commodity which they ship must remain in the same trailer until it reaches its destination.

This statement, so far, is in the main a brief resumé of the factual allegations of the complaint either admitted or not disputed by defendants. It should also be noted, and this is without dispute, that each of the plaintiffs upon entering Illinois is required not only to equip a trailer owned by it so as to comply with the Illinois Act, but is also required to equip a trailer in use by it but owned by another carrier. This it has no right to do without the specific authority of the other carrier.

We were led to believe at the time of the hearing, and still believe, that all of the states, except Illinois and perhaps Oregon and Idaho, require nothing more than the conventional or straight mud flap, none of which would comply

with the Illinois Act. During oral argument the following colloquy took place between Judge Briggle and Mr. Husted, counsel for defendants:

> "Judge Briggle: In other words, the Illinois Act is for 48 states, there is no other state that would be acceptable in Illinois?
>
> Mr. Husted: No.
>
> Judge Briggle: You say Illinois would be acceptable in those states?
>
> Mr. Husted: Yes.
>
> Judge Briggle: But no one of those is acceptable in Illinois, therefore, Illinois' act must be complied with by 48 states?
>
> Mr. Husted: That is true."

Later, counsel modified his answers by stating that the splash guard provided by Oregon and Idaho would be acceptable in Illinois. In the written brief subsequently filed, counsel brands as untrue "plaintiffs' contention that 'splash guards which are permitted in all other states are illegal in Illinois' and that 'the Attorney General admits this as to 45 states.'" The argument proceeds:

> "As above explained, almost all of the states which have anti-splash statutes require a cover or fender and certain ones permit the old style flap as an alternative or stop-gap measure. *The fenders required by these other states are legal in Illinois.* [Italics ours.]

As we understand this statement, counsel for defendants now claim that splash guards or fenders required by other states would be recognized by Illinois. It is difficult to believe that such a concession was intended. If so, there is no reason for this law suit in which plaintiffs seek to invalidate the Illinois Act which prevents them for entering Illinois equipped with mud flaps in accordance with the laws of the states of their respective domiciles.

It was also conclusively shown that the contour mud flap possesses no advantage over the conventional or straight mud flap previously required in Illinois and presently required in most of the states. Counsel for defendants in oral argument substantially so conceded, as evidenced by the following statement. "There was a wealth

of testimony to the effect that in their opinion the old style were better and were preferable and were cheaper and were longer lived, but nobody said that it bore no relation, no reasonable relation to the end sought." In connection with this admission it should be noted that counsel consistently throughout the hearing took the position that such comparison was irrelevant, objected to the admission of such testimony and for the same reason, we assume, offered no testimony on this point in rebuttal.

The intervenor, Arkansas-Best Freight System, Inc., is an Arkansas corporation and is engaged in the transportation of property by motor vehicle as a common carrier in interstate commerce between points in the states of Arkansas, Kansas, Missouri, Illinois, Louisiana and Texas, pursuant to a certificate of public convenience and necessity. The greater part of its operations over Illinois highways involves the transportation of property moving in interstate commerce.

On December 13, 1957, the Arkansas Public Service Commission entered an order which requires that trailers operating on Arkansas highways be equipped with "a perpendicular, flexible type mud guard hanging at a right angle from the trailer." Since the Illinois Act requires that the splash guard contour the wheel, it is evident that a single splash guard cannot satisfy the requirements of both states. It is, therefore, hardly open to doubt that use by intervenor of a splash guard which meets the requirements of the state of its domiciles would be unlawful and not permitted in the state of Illinois. Conversely, a trailer equipped with a mud flap in accordance with the Illinois requirement would not be permitted in the state of Arkansas and its use in that state would be unlawful. In fact, a driver-employe of intervenor engaged in the operation of a trailer upon a public highway in Illinois was, on January 2, 1957, arrested and charged with a violation of the Illinois Act. A hearing on the charge was continued, pending the result of this litigation.

Intervenor's Director of Labor and Safety testified as to the situation resulting from the conflict in the requirements imposed by the two states. In response to the suggestion that a trailer at the state line might be stopped and equipped to comply with the Illinois Act, the witness stated:

"• • • that would entail quite a maintenance program and a terrific additional maintenance cost because we do all our maintenance work, all our major maintenance work at our Little Rock shop, and other points such as St. Louis and Fort Smith are merely emergency service points."

The witness also testified as to the problem presented in complying with the Illinois Act, with trailers received from other carriers in exchange and with trailers loaded with explosives:

"• • • we haul explosives from the Red River Arsenal in Texarkana, and there is one specific carrier I can think of now, Red Ball Motor Freight, who operates primarily in Louisiana and Texas. They also haul a lot of explosives out of there, and when that arsenal calls our Texarkana terminal manager to come out and get 'x' number of loads, they do not take in regard whose trailer it is, but they merely load so many trailers going in our direction, and we go out there and pull those trailers. If they were to load those on a Red Ball Trailer, and Red Ball, being a Texas domiciled carrier, we would be all right with his mud flap until we got to the Illinois line. Then we would have to stop there and add the contour mudflap, operate it east of St. Louis, and when it returns to St. Louis, we would have to remove it and the contour mud flap, having to be welded, we would have quite a problem welding them on and several days later going in there and attempting to take them off.

"Further, under the interchange carrier agreement, we would have to contact Red Ball Motor Freight in Dallas, Texas, and receive their authority to add this contour mudflap to their pieces of equipment.

• • •

"Q. With a load of explosives, would you be in a position to weld the contour mudflap on the trailer?

A. Definitely not.

Q. Why?

A. Because of the danger of explosion, fire, and things of that nature."

A witness for Watson described the problem presented by an attempt to comply with the Illinois Act, as follows:

> "Any time you stop a trailer to do anything to it, it disrupts the service. Motor carriers exist on a fast, efficient transportation service and, if we were required to stop a trailer, assuming we had permission to install the mudflap on a foreign trailer, that is, a connecting line trailer, if we were required to stop that trailer at some state line or some garage to install a contour mudflap, there is bound to be delay which restricts the kind and type of motor carrier service we have been providing for years."

It would unduly prolong this opinion to quote further from the testimony. It is sufficient to state that the testimony of the witnesses just quoted finds abundant corroboration in the record. In fact, the seriousness of the problem to interstate motor carriers is not challenged by defendants. Rather, the state takes the position that it is not concerned with the problem or the difficulty with which such carriers are presented. It is significant that during the hearing, including the argument, no practical or reasonable suggestion was made as to how the Act could be complied with.

Congress has not seen fit to exercise its constitutional power to legislate relative to splash guards on trailers engaged in interstate commerce. The importance of uniformity would seem to suggest the desirability of such legislation. However, in its absence the question arises as to what protection, if any, is afforded by the commerce clause of the Constitution. Defendants do not and could not dispute but that enforcement of the Act would impose some burden upon interstate commerce. Their position, however, is, as we understand, that such burden is immaterial in view of the fact that the Act is non-discriminatory as between intra- and interstate commerce, and further, that the Act is a reasonable exercise by the legislature of its police power, inasmuch as its purpose is to provide for the safety of persons and motor vehicles using the highways. Plaintiffs contend that the burden imposed upon commerce is of such magnitude as to entitle them to protection under the commerce clause, that it is greater than can be justified under the police power and without merit as a safety measure.

We gather from a study of the cases that the conflicting interest between the federal and state governments must be resolved in accordance with the facts of each case. It is our firm conviction, under the proof, that enforcement of the Act would impose not merely some but a tremendous burden upon interstate commerce. Particularly is this so as to commerce between the states of Illinois and Arkansas; in fact, commerce between those two states would be stymied to the extent that its future existence would be imperiled, if not obliterated. More than that, the same insurmountable burden would be imposed upon commerce between Illinois and any other state or states which might see fit to do as Arkansas has done, that is, exclude trailers equipped with the contour splash guard required by the Act. Furthermore, we are convinced that little, if anything, can be claimed for the Act as a safety measure. We have already noted the concession that the weight of the evidence is to the effect that the contour possesses no advantages over the straight or conventional mud flap. While there is some proof of advantages possessed by the contour flap, there is also proof of its disadvantages. In fact, there is rather convincing testimony that use of the contour flap creates hazards previously unknown to those using the highways.

Plaintiffs, in support of the contention that the Act should be held unconstitutional, rely upon *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, and *Morgan* v. *Virginia*, 328 U. S. 373. Defendants, in opposition thereto, rely upon *South Carolina State Highway Department, et al.* v. *Barnwell Brothers, Inc., et al.*, 303 U. S. 177, and *Maurer, et al.* v. *Hamilton*, 309 U. S. 598.

In the *Southern Pacific* case, the Court held unconstitutional the Arizona Train Limit Law which made unlawful operation within the state of a passenger train of more than fourteen cars or a freight train of more than seventy cars. In doing so it reversed the Supreme Court of Arizona which had sustained the Act as a safety measure within the police power of the legislature to enact. It can hardly be doubted but that the reasoning of the Court in Southern Pacific, if applicable, strongly supports plaintiffs' contention in the instant case. Defendants, however, deny its applicability on the ground that the statute there under consideration related to transportation by railroad, while in the instant case it relates to transportation by motor carrier, relying upon the *Barnwell* and *Hamilton* cases.

In these cases the Supreme Court sustained the validity of state legislation regulating motor traffic within the state. In *Barnwell*, the legislation prohibited the use on the state highways of South Carolina of motor trucks whose width exceeded 90" and whose weight included a load in excess of 2000#. In *Hamilton*, the Court sustained the validity of a Pennsylvania statute which prohibited the operation on the highways of the state of any vehicle carrying any other vehicle "above the cab of the carrier vehicle or over the head of the operator of such carrier vehicle." Undoubtedly, Barnwell and Hamilton stand for the proposition that a state in the exercise of its police power has greater latitude in the regulation of motor vehicles than it does of railroads. This is because the former generally is concerned with matters of local interest while the latter more often is concerned with the national interest.

In *Barnwell*, the Court stated (page 185):

> "• • • it has been recognized that there are matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce but which, because of their local character and their number and diversity, may never be fully dealt with by Congress. Notwithstanding the commerce clause, such regulation in the absence of Congressional action has for the most part been left to the states by the decisions of this Court, subject to the other applicable constitutional restraints."

Further, the Court stated (page 187):

> "Few subjects of state regulation are so peculiarly of local concern as is the use of state highways. There are few, local regulation of which is so inseparable from a substantial effect on interstate commerce. Unlike the railroads, local highways are built, owned and maintained by the state or its municipal subdivisions. The state has a primary and immediate concern in their safe and economical administration. The present regulations, or any others of like purpose, if they are to accomplish their end, must be applied alike to interstate and intrastate traffic both moving in large volume over the highways. The fact that they affect alike shippers in interstate and intrastate commerce in large numbers within as well as without the state is a safeguard against their abuse."

Thus, the Court treated the weight and width requirements as of local concern even though they affected interstate commerce. It was on this premise that the Court held the Act constitutional and stated that the inquiry under the commerce clause was whether the state legislature in adopting the regulations under attack (page 190) "has acted within its province, and whether the means of regulation chosen are reasonably adapted to the end sought."

The *Hamilton* case also treated the statute under attack as relating to a matter of local concern. The Court pointed out (page 605):

> "The width, grades, curves, weight-bearing capacity, surfacing and overhead obstructions of the highways differ widely in the forty-eight different states and in different sections of each state. There are like variations with respect to congestion of traffic. State regulation, developed over a period of years, has been directed to the safe and convenient use of the highways and their conservation with reference to varying local needs and conditions."

This appraisement of Barnwell and Hamilton appears to have been recognized by the Supreme Court in the later cases of *Southern Pacific Co.* and *Morgan*. For instance, in the *Southern Pacific* case (page 767) the Court stated:

> "When the regulation of matters of local concern is local in character and effect, and its impact on the national commerce does not seriously interfere with its operation, and the consequent incentive to deal with them nationally is slight, such regulation has been generally held to be within state authority." [Citing the *Barnwell* and *Hamilton* cases.]

In contrast, the Court on the same page stated:

> "But ever since *Gibbons* v. *Ogden*, 9 Wheat. 1, the states have not been deemed to have authority to impede substantially the free flow of commerce from state to state, or to regulate those phases of the national commerce which, because of the need of national uniformity, demand that their regulation, if any, be prescribed by a single authority."

The Court also stated (page 781):

> "More recently in *Kelly* v. *Washington*, 302 U. S. 1, 15, we have pointed out that when a state goes beyond

safety measures which are permissible because only local in their effect upon interstate commerce, and 'attempts to impose particular standards as to structure, design, equipment and operation [of vessels plying interstate] which in the judgment of its authorities may be desirable but pass beyond what is plainly essential to safety and seaworthiness, the State will encounter the principle that such requirements, if imposed at all, must be through the action of Congress which can establish a uniform rule. Whether the State in a particular matter goes too far must be left to be determined when the precise question arises.'"

The Court further stated (page 779):

"The principle that, without controlling Congressional action, a state may not regulate interstate commerce so as substantially to affect its flow or deprive it of needed uniformity in its regulation is not to be avoided by 'simply invoking the convenient apologetics of the police power,' *Kansas City Southern R. Co.* v. *Kaw Valley District*, 233 U. S. 75, 79 • • •."

This distinction drawn between regulations concerned with local matters and those involving the national interest is emphasized in the *Morgan* case, wherein the Court held unconstitutional an Act of Virginia which required passenger motor vehicle carriers, both interstate and intrastate, to separate without discrimination the white and colored passengers in their motor buses. First the Court discussed the test to be applied in determining whether a state statute is invalid as imposing an undue burden upon commerce. The Court stated (page 377):

"The precise degre of a permissible restriction on state power cannot be fixed generally or indeed not even for one kind of state legislation, such as taxation or health or safety. There is a recognized abstract principle, however, that may be taken as a postulate for testing whether particular state legislation in the absence of action by Congress is beyond state power. This is that the state legislation is invalid if it unduly burdens that commerce in matters where uniformity is necessary—necessary in the constitutional sense of useful in accomplishing a permitted purpose. Where uniformity is essential for the functioning of commerce,

a state may not interpose its local regulation. Too true it is that the principle lacks in precision. Although the quality of such a principle is abstract, its application to the facts of a situation created by the attempted enforcement of a statute brings about a specific determination as to whether or not the statute in question is a burden on commerce. Within the broad limits of the principle, the cases turn on their own facts."

The Court, commencing on page 378, cites many cases in support of three propositions:

(1) "In the field of transportation, there has been a series of decisions which hold that where Congress has not acted and although the state statute affects interstate commerce, a state may validly enact legislation which has predominantly only a local influence on the course of commerce. [Citing *Barnwell* and *Hamilton.*]"

(2) "It is equally well settled that, even where Congress has not acted, state legislation or a final court order is invalid which materially affects interstate commerce. [Citing *Southern Pacific.*]"

"(3) "Because the Constitution puts the ultimate power to regulate commerce in Congress, rather than the states, the degree of state legislation's interference with that commerce may be weighed by federal courts to determine whether the burden makes the statute unconstitutional. [Again citing *Southern Pacific.*]"

In appraising the effect which the statute had on interstate commerce, the Court stated (page 381):

"To appraise the weight of the burden of the Virginia statute on interstate commerce, related statutes of other states are important to show whether there are cumulative effects which may make local regulation impracticable."

In holding the Act unconstitutional, the Court further stated (page 386):

"As there is no federal act dealing with the separation of races in interstate transportation, we must decide the validity of this Virginia statute on the challenge that it interferes with commerce, as a matter of

balance between the exercise of the local police power and the need for national uniformity in the regulations for interstate travel."

Thus, the distinction between the two lines of cases does not arise, as defendants contend, from the fact that the Court, in *Barnwell* and *Hamilton*, was concerned with transportation by motor vehicle and in *Southern Pacific* with transportation by railroad. The distinction lies in the fact that in the two former cases the provisions under consideration related to matters of local concern while in the latter case the provision related to a matter of national concern. Defendants apparently recognize this distinction by arguing that the Act under attack is of local concern, on the basis that Illinois is a "wet-weather" state, having a large amount of wet, rainy and snowy weather, causing its roads to be wet and dirty for a substantial portion of each year. Defendants offered in evidence a report of the United States Weather Bureau showing the average annual precipitation at different points in the state. No similar proof, or proof of any kind, was offered as to the weather and highway conditions in other states. The mere fact that large amounts of rain and snow fall upon the highways of Illinois furnishes no support to the argument that the requirement as to splash guards is a matter of local concern in the absence of a showing that weather conditions affecting highways is different in other states, particularly those surrounding Illinois. We know, however, from experience common to all who travel the highways of this country that the situation under discussion is the same or similar in many states, and perhaps all. Particularly is that true in states surrounding Illinois and others of the midwest.

Defendants take no note of the burden which the Act places upon commerce, which perhaps is consistent with the theory that it relates to a matter of local concern and the burden, therefore, is immaterial. We reject the premise upon which this theory is predicated. The burden is material because enforcement directly relates to the national interest. That burden, in our judgment, will be tremendous. In fact, enforcement is likely to produce a demoralizing effect upon the operations conducted by plaintiffs, the intervenor and others similarly engaged. The certificate of public convenience and necessity issued to plaintiffs and other motor carriers by the Interstate Com-

merce Commission requires that they "shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure to do so shall constitute sufficient grounds for suspension, change or revocation of this certificate." It is not discernible to us how plaintiffs can discharge their responsibilities under this certificate and at the same time comply with the requirements of the Illinois Act. It is hardly open to question but that compliance will result in intolerable delay in transportation and the expenditure of large sums of money for equipment and maintenance.

We are not impressed with defendant's argument that the Act should be sustained on the basis that the legislature acted within its police power and that the means of regulation chosen by it are reasonably adapted to the end sought. We assume that the contour splash guard will serve some beneficial purpose in eliminating splash. The same could be said for a piece of cardboard or other object hung behind the rear wheels of a trailer. As already shown, the conventional or straight mud flap previously recognized in Illinois and presently recognized by most and perhaps all of the other states served the purpose of preventing splash as well as does the contour guard. The result of the requirements of the Act is to place a great burden upon commerce, without any compensating benefit to the state. Under the circumstances, it cannot be held that the requirements of the Act are reasonably adapted to the end sought. In any event, a challenge that the Act interferes with commerce requires this Court to decide its validity "as a matter of balance between the exercise of the local police power and the need for national uniformity in the regulations for interstate travel." *Morgan* v. *Virginia*, 328 U. S. 373, 386. In our judgment, the burden which the Act casts upon commerce far outweighs any benefit derived by the state.

It is, therefore, our view and we so hold that the Act is unconstitutional and void, as violative of Article I, Section 8, of the Constitution of the United States, and that plaintiffs are entitled to a decree permanently enjoining its enforcement.

Indorsed

Filed Feb. 26, 1958.

G. W. Schwaner, Clerk.

APPENDIX II

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
SOUTHERN DIVISION

Navajo Freight Lines, Inc., a New Mexico Corporation, et al. vs. Joseph D. Bibb, Director of the Department of Public Safety of the State of Illinois, et al.	Civil Action No. 2438 In Chancery

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. FINDINGS OF FACT

1. That each of the plaintiffs operates in interstate commerce pursuant to certificates of public convenience and necessity issued by the Interstate Commerce Commission.

2. That pursuant to said certificates, each of the plaintiffs operates into and through the State of Illinois.

3. That intervener Arkansas-Best Freight System, Inc. operates in interstate commerce pursuant to a certificate of public convenience and necessity issued by the Interstate Commerce Commission.

4. That pursuant to said authority, Arkansas-Best Freight System, Inc. operates between points in Arkansas and Illinois, as well as between Arkansas and other States through Illinois.

5. That intervenor Arkansas-Best Freight System, Inc. also operates in intrastate commerce in the State of Arkansas, pursuant to authority granted by the Arkansas Public Service Commission, and is subject to the rules and regulations of said Commission.

6. That Section 121.02 of the Uniform Act Regulating Traffic on Highways, being Section 218b of Chapter 95½, Illinois Revised Statutes, as amended, by Act approved

July 8, 1957, requires that trailers of plaintiffs and intervener be equipped with a contour splash guard meeting certain described specifications and contouring the wheel within six (6) inches of the tire.

7. That compliance with said Act for vehicles used exclusively in interstate commerce by plaintiffs and intervener would cost each of them in excess of Three Thousand ($3,000.00) Dollars.

8. That on December 13, 1957 the Arkansas Public Service Commission issued an order requiring that all vehicles using Arkansas highways be equipped with the straight splash guard hanging perpendicular to the trailer and parallel to the rear axle.

9. That it is impossible for a splash guard to comply with the requirements of the Illinois Splash Guard Act and the order of the Arkansas Public Service Commission.

10. That a vehicle equipped with the splash guard required in Illinois cannot be operated legally in Arkansas, and a vehicle equipped with the splash guard required in Arkansas cannot be operated legally in Illinois.

11. That the splash guards permitted or required in 45 States are illegal in the State of Illinois by virtue of the Illinois Splash Guard Act.

12. That by virtue of the conflicting requirements of Illinois and Arkansas, the free flow of commerce by motor carriers is obstructed because equipment legal in one State is illegal in the other.

13. That each of the plaintiffs and intervener interchanges trailers with carriers throughout the United States in accordance with common and accepted practice of motor carrier in interstate commerce in order to provide through trailer service from origin to destination in compliance with the certificate of public convenience and necessity issued to them by the Interstate Commerce Commission.

14. That the trailers of each of the plaintiffs may reasonably be expected to traverse each of the 48 States by virtue of the interlining practices of plaintiffs and intervener with other carriers.

15. That the trailers of each of the plaintiffs traverse upon highways of the State of Arkansas.

16. That because trailers equipped in accordance with Illinois splash guard requirements cannot be operated legally in Arkansas, and trailers equipped in accordance with Arkansas splash guard requirements cannot be operated legally in Illinois, the interlining operations of plaintiffs will be obstructed.

17. That all carriers who operate into or through Illinois from any point in the United States will be required to equip their vehicles in accordance with the Illinois Splash Guard statute.

18. That all carriers whose equipment is sent into or through Illinois by virtue of interlining will be required to equip their vehicles in accordance with the Illinois Splash Guard statute.

19. That since it is impossible for a carrier operating in interstate commerce to determine which of its equipment will be used in a particular area, or on a particular day, or days, carriers operating into or through Illinois, or whose equipment may operate into Illinois through interlining will be required to equip all of their trailers in accordance with the requirements of the Illinois Splash Guard statute.

20. That because plaintiffs who operate into and through Illinois have no way of compelling carriers with whom they interline to equip their trailers in accordance with the Illinois splash guard statute, they will be forced to cease interlining trailers destined to or through Illinois with carriers who do not comply with Illinois law.

21. That it would be impossible in most cases, and impracticable in others, for plaintiffs to equip trailers obtained by interlining with the splash guard required by Illinois.

22. That the practice of interlining or interchanging trailers is an important means by which plaintiffs serve the shipping public in accordance with certificates of public convenience and necessity issued to them by the Interstate Commerce Commission, and is vital to the very existence of plaintiffs.

23. That the contour splash guard required by Section 121.02 of the Uniform Act Regulating Traffic on Highways, being Section 218b of Chapter 95½, Illinois Revised Statutes, as amended, by Act approved July 8, 1957, is not

intended to nor does it deal with a safety need or problem peculiar to the State of Illinois.

24. That the contour splash guard required in Illinois does not reduce the spray and splash caused by motor vehicles on highways any more effectively than the conventional or straight splash guard permitted in forty-five (45) States, if as well.

25. That because the contour splash guard is difficult to properly affix to the trailer, and because in its position it is peculiarly liable to receive many blows and be subject to vibration, it is particularly liable to come off while the vehicle is in operation, presenting a hazard to oncoming traffic, and creating a difficult and costly maintenance problem for carriers.

26. That since because of the Illinois Contour Splash Guard Act vehicles will be traveling with said guards in all forty-eight (48) States, the danger and safety hazards created by said guard will hinder and obstruct commerce on highways throughout the United States.

27. That because of the shrouding effect of the contour splash guard heat dissipation from air flow around the brake drum is reduced, creating brake fade from overheated brakes.

28. That brake fade increases the distance needed for a vehicle to stop, since the contour guard will be used throughout the United States, a new hazard will be added to highway travel in interstate commerce all over the United States.

29. That plaintiffs are seeking by this action to have the contour splash guard state of the State of Illinois declared invalid and unconstitutional as an undue and unreasonble burden and obstruction to the free flow of interstate commerce.

30. That said Illinois Contour Splash Guard Act, while placing a substantial burden and obstruction upon the free flow of interstate commerce, does not contribute to safety in Illinois, and in fact introduces new dangers and hazards to highway travel in Illinois and throughout the United States not hitherto in existence.

II. CONCLUSIONS OF LAW.

1. That the matter in controversy exceeds the sum of Three Thousand ($3,000.00) Dollars for each plaintiff and intervener, exclusive of interest and costs and arises under the Constitution and laws of the United States.

2. That this Court has jurisdiction of the parties and the subject matter of this action.

3. That enforcement of Section 121.02 of the Uniform Act Regulating Traffic on Highways, being Section 218b of Chapter 95½, Illinois Revised Statutes, as amended, by Act approved July 8, 1957 requiring that plaintiffs' and intervener's trailers be equipped with contour splash guards, and the Order of the Arkansas Public Service Commission issued December 13, 1957, requiring that plaintiffs' and intervener's trailers be equipped with the straight or conventional splash guards will render it impossible for plaintiffs and intervener to operate the same equipment in both States, thereby obstructing the free flow of commerce in direct violation of the Commerce Clause, Article I, Section 8 of the United States Constitution, and said Illinois Act is, therefore, unconstitutional and invalid.

4. That Section 121.02 of the Uniform Act Regulating Traffic on Highways, being Section 218b of Chapter 95½, Illinois Revised Statutes, as amended, by Act approved July 8, 1957, unduly and unreasonably burdens and obstructs the free flow of commerce between the States by making splash guards which are legal in forty-five (45) States illegal in Illinois, and is, therefore, unconstitutional and invalid as a direct violation of the Commerce Clause, Article I, Section 8 of the United States Constitution.

5. That plaintiffs and intervener are entitled to a permanent injunction enjoining and restraining the defendants, and each of them, their successors in office and their agents, attorneys and employes, and each and every one of them, from enforcing or instituting proceedings to enforce Section 121.02 of the Uniform Act Regulating Traffic on Highways, being Section 218b of Chapter 95½, Illinois Revised Statutes, as amended, by Act approved July 8, 1957 by reason of the fact that said Act is an unreasonable and undue burden and obstruction to the free flow of interstate

commerce in violation of the Commerce Clause, Article I, Section 8 of the United States Constitution.

ENTER:

/s/ J. EARL MAJOR
/s/ CHAS. G. BRIGGLE
/s/ FREDERICK O. MERCER

Dated: Feb. 26, 1958.
Indorsed Filed
Feb. 26, 1958
G. W. Schwaner, Clerk

APPENDIX III.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
SOUTHERN DIVISION

Navajo Freight Lines, Inc.,
a New Mexico corporation,
Ringsby Truck Lines, Inc.
A Nebraska corporation,
Prucka Transportation, Inc.,
A Nebraska corporation,
Denver Chicago Trucking Co., Inc.,
A Nebraska corporation, and
Pacific Intermountain Express Co.,
a Nevada corporation,
Plaintiffs,

and

Arkansas-Best Freight System, Inc.,
An Arkansas corporation,
Intervenor,

vs.

Joseph D. Bibb, Director of the Department of Public Safety of the State of Illinois

and

William H. Morris, Superintendent of the Division of State Highway Police, Department of Public Safety of the State of Illinois,
Defendants.

Civil Action
No. 2438
For Declaratory
Judgment
and Injunctive
Relief

ORDER.

This cause coming on to be heard on the complaint of plaintiffs, Navajo Freight Lines, Inc., Ringsby Truck Lines, Inc., Prucka Transportation, Inc., Denver Chicago Trucking Co., Inc., Watson Bros. Transportation Co., Inc. and Pacific Intermountain Express Co., and the intervening petition and complaint of intervenor, Arkansas-Best Freight System, Inc., for a declaratory judgment that Section 121.02 of the Uniform Act Regulating Traffic on High-

ways, being Sec. 218b of Chap. 95½ (Ill. Rev. Stat.), as amended by Act approved July 8, 1957, is unconstitutional and void and for a permanent injunction enjoining defendants from enforcing or instituting proceedings against plaintiffs under the said Act, the Court having jurisdiction of the parties and the subject matter, being fully advised in the premises having heard the evidence and the arguments of all the parties hereto in open court, having considered the briefs submitted by the parties, and having filed its findings of fact, conclusions of law and opinion on February 26, 1958 holding Section 121.02 of the Uniform Act Regulating Traffic on Highways, being Section 228b of Chapter 95½, Illinois Revised Statutes, as amended by Act approved July 8, 1957 to be unconstitutional and void, as violative of Article I, Section 8, of the Constitution of the United States.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendants, Joseph D. Bibb, Director of the Department of Public Safety of the State of Illinois, and William H. Morris, Superintendent of the Division of State Highway Police, Department of Public Safety of the State of Illinois, and each of them, their successors in office and their agents, servants, attorneys and employees be and they are hereby permanently restrained and enjoined from enforcing or instituting any proceedings of any kind or nature whatsoever against the plaintiffs or intervenor herein for violations of Section 121.02 of the Uniform Act Regulating Traffic on Highways, being Section 218b of Chapter 95½, Illinois Revised Statutes, as amended, by Act approved July 8, 1957.

ENTER:

/s/ CHAS. G. BRIGGLE

/s/ FREDERICK O. MERCER

Dated: March 10th, 1958

Indorsed Filed

Mar. 19, 1958

G. W. Schwaner, Clerk

APPENDIX IV.

People v. Warren, 11 Ill. 2d 420.

Mr. JUSTICE BRISTOW delivered the opinion of the court:

Cecil Warren, plaintiff in error, was charged with and fined $50 for violating the provisions of section 121.02 of the Uniform Act Regulating Traffic on Highways. This section was amended July 15, 1955. (Ill. Rev. Stat. 1955, chap. 95½, par. 218b.) He appeals directly to this court, and we have jurisdiction because the sole question presented is the constitutionality of the section which reads as follows:

It is unlawful for any person to operate any new motor vehicle of the second division which is purchased on and after September 1, 1955, or any motor vehicle of the second division the splash guards of which have been replaced on and after September 1, 1955, which replacement shall be necessary when present splash guards are unable to prevent the splashing of mud or water upon the windshield of other motor vehicles, upon the highways of this State outside the corporate limits of a city, village or incorporated town, unless such vehicle is equipped with rear fender splash guards which shall comply with the specifications as hereinafter provided and such splash guards shall be so attached as to prevent the splashing of mud or water upon the windshield of other motor vehicles; provided, that on and after January 1, 1957, this amendatory Act of 1955 shall apply to all motor vehicles of the second division.

The rear fender splash guards shall contour the wheel in such manner that the relationship of the inside surface of any such splash guard to the tread surface of the tire or wheel shall be relatively parallel, both laterally and across the wheel, at least throughout the top 90 degrees of the rear 180 degrees of the wheel surface and the downward extension of the curved surface shall extend to a length which shall end not more than ten inches from the ground.

Such splash guards shall be wide enough to cover the full trend [*sic*] or treads of the tires being protected and shall be installed close enough to the tread surface of the tire or wheel as to control the side-throw or wash of the bulk of the thrown road surface material and keep such

bulk within a tangent not to exceed 15 degrees measured from a base line formed by the top height of the wheel.

Such splash guards may be constructed of a flexible material, but shall be attached in such a manner that, regardless of movement, either in such splash guards or the vehicle, such splash guards will retain their general parallel relationship to the tread surface of the tire or wheel under all ordinary operating conditions.

This Section shall not apply to motor vehicles whose construction does not require such splash guards, nor to motor vehicles in transit and capable only of using temporary splash guards approved by the Illinois State Highway Police.

The validity of this section is challenged on grounds which we shall hereinafter consider separately. The motor vehicle in question is one of the second division—vehicles designed and used for pulling or carrying freight and also vehicles or motor cars which are designed and used for carrying more than seven persons. (Ill. Rev. Stat. 1955, chap. 95½, par. 99.) No controverted fact questions are involved.

Every presumption is in favor of the validity of a statute enacted under the police power. (*Gadlin* v. *Auditor of Public Accounts*, 414 Ill. 89, 95; *Zelney* v. *Murphy*, 387 Ill. 492, 499; *Thillens, Inc.* v. *Hodge*, 2 Ill. 2d 45, 57.) The only limitations upon the legislature in the exercise of its police power is that the statute must reasonably tend to correct some evil or promote some interest of the State and not violate some positive mandate of the constitution. (*Clarke* v. *Storchak*, 384 Ill. 564, 579; *People ex rel. Christiansen* v. *Connell*, 2 Ill. 2d 332, 344.) The General Assembly has a wide discretion in the enactment of laws for the protection of the public health, safety and morals or the promotion of the general welfare and such statutes are valid when they apply accordingly and uniformly to all persons similarly situated. (*City of Chicago* v. *Rhine*, 363 Ill. 619, 624; *Weksler* v. *Collins*, 317 Ill. 132, 138.) In the exercise of its inherent police power the legislature may enact laws regulating, restraining or prohibiting anything harmful to the welfare of the people, even though such regulation, restraint or prohibition interferes with the liberty or property of an individual. *Bode* v. *Barrett*, 412 Ill. 204, 225; *City of Evanston* v. *Wazan*, 364 Ill. 198, 202;

Fenske Bros., Inc. v. *Upholsterers Union*, 358 Ill. 239, 251; *People* v. *Anderson*, 355 Ill. 289, 296.

No person has the right to conduct a business upon the public highways or to devote them to private gain except as the State, by acquiescence or by law, may permit it. (*Hayes Freight Lines, Inc.* v. *Castle*, 2 Ill. 2d 58, 64; *Bode* v. *Barrett*, 412 Ill. 204, 219; *Weksler* v. *Collins*, 317 Ill. 132, 139, 142.) If the means be appropriate, the ultimate aim of safeguarding life, health and property upon the highways is clearly within the power of the General Assembly. The legislature may properly enact such a law even though it may interfere with the property of an individual; the overriding consideration being that the safety of the people is paramount to the unfettered use by an individual of his property. *Bode* v. *Barrett*, 412 Ill. 204, 225.

The measure of the reasonableness of a police regulation is not necessarily what is best but what is fairly appropriate to the purpose of the act under all circumstances. (*Keig Stevens Baking Co.* v. *City of Savanna*, 380 Ill. 303, 309; *Weksler* v. *Collins*, 317 Ill. 132, 141.) The rapid progress of science and invention has created and is constantly creating new needs for regulation by law. Powerful machines, capable of inflicting death, bodily injury and destruction of property, traverse the arteries of traffic at speeds which, if unregulated, would add to the already frightening total of highway casualties. Chapter 95½, of Illinois Revised Statutes, 1955, contains the various legislative acts making up the motor vehicle law. No reasonable person would question not only the right but the absolute duty of the legislature to imposed these regulations upon those who use the streets and roads of the State. All these regulations, including even prohibitions which stand in substantial relationship to the public welfare, must be presumed by the courts to be necessary for the purpose of protecting public health, safety and morals, and must be sustained under the police power of the State.

In the present case plaintiff in error does not question the right of the legislature to provide for and regulate the use of splash guards on motor vehicles. He poses only the question whether the legislature has properly exercised its power by the adoption of the section of the statute under attack in its present form. Tested by the rules of constitutional interpretation alluded to above, we find no merit in

the contention that the provisions of that section are unreasonable, arbitrary and capricious. The splashing of water or mud upon the windshields of other vehicles on the road is an evil which the legislature rightfully aims to correct. We can give no weight to the contention of the plaintiff in error that the "mud flaps" which were required upon all trucks under the 1951 statute are to be preferred as more simple and inexpensive. It is within the power of the legislature to solve safety problems, by whatever means it deems best, so long as such means reasonably tend to correct the evil. Since this police regulation is fairly appropriate to the expressed purpose of the statute, it is immaterial so far as the court is concerned, whether it is the best possible means or is inferior to the 1951 enactment which it supplants.

The claim that this statute is "impossible of construction" and "requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at their meaning," is equally without merit. The requirements and specifications for the splash guards are intelligible and ascertainable and the standards for their implementation are fully spelled out. The record shows that, without any difficulty, there can be compliance.

The complaint that this act delegate legislative authority to administrative officials, and is therefore invalid, is not substantiated. It is necessary to distinguish between the delegation of true legislative power and the delegation to a subordinate of authority to execute the law. (*Lydy, Inc.* v. *City of Chicago*, 356 Ill. 230, 235.) As we said, in *City of Evanston* v. *Wazau*, 364 Ill. 198, at page 204: "It is true that while a legislative body cannot divest itself of its proper function of determining what the law shall be, it may nevertheless authorize others to do those things which it might properly, but cannot understandingly or advantageously do itself. • • • This doctrine is sound and has been adhered to for many years, for the obvious reason that government could not be carried on if nothing were left to the judgment and discretion of administrative officers. • • • A clear distinction exists, however, between the power to legislate—to grant the permit under certain specified conditions—and the power to administer or regulate its exercise, once granted. The true distinction is between a delegation of power to make the laws, which in-

volves a discretion as to what the law shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no objection can be made. 1 Sutherland on Stat. Const. 2d ed. p. 148."

The constitution does not require the General Assembly to establish all-embracing absolute criteria whereby every detail and circumstance necessary in the enforcement of the law is anticipated; intelligible standards to guide the agency charged with the enforcement are sufficient. *Hayes Freight Lines, Inc.* v. *Castle*, 2 Ill. 2d 58, 65.

The act in question delegates no power to make the law; it merely imposes upon the Illinois State Highway Police the duty and authority of approving temporary splash guards for motor vehicles in transit. The term "vehicles in transit" is defined by statute. It means those towed or carried. (Ill. Rev. Stat. 1955, chap. 95½, par. 19). The General Assembly is not required to concern itself with the myriad of transitory circumstances to be encountered. It may confer reasonable discretion upon the proper agency as to the execution of the law. The ministerial duty of approving temporary splash guards for "in transit" trucks is properly delegated to the officials on the spot. The legislature could hardly do this, so it must fall in that twilight area where some discretion is left to the police.

Complaint is made that the statute is discriminatory and that there is no rational basis for the classification between those vehicles which require splash guards and those which do not. A valid and justifiable classification must be based on a real and substantial difference having a rational relation to the subject of the particular legislation. (*Hansen* v. *Raleigh*, 391 Ill. 536, 544; *People ex rel Heydenreich* v. *Lyons*, 374 Ill. 557, 564; *Crews* v. *Lundquist*, 361 Ill. 193, 197; *Lueth* v. *Goodknecht*, 345 Ill. 197, 199.) The legislature is vested with a broad discretion in making classifications in the interest of the public safety, and the question of classification is primarily legislative and only becomes judicial when legislative action is clearly unreasonable. (*Hayes Freight Lines, Inc.* v. *Castle*, 2 Ill. 2d 58, 64; *Weksler* v. *Collins*, 317 Ill. 132, 139; *Heartt* v. *Village of Downers Grove*, 278, Ill. 92, 95.) The test of equal protection of the laws is whether the legislation in question operates equally on all persons in the class to which it applies and not whether that

class is treated the same as another class. (*Hansen* v. *Raleigh*, 391 Ill. 536, 544; *Smith* v. *Murphy*, 384 Ill. 34, 40; *Murphy* v. *Cuesta, Rey & Co.*, 381 Ill. 162, 165.) As to classification and subclassification within an act, it must clearly appear that the judgment of the legislature is erroneous or that the discretion vested in the legislature has been arbitrarily abused and the person who asserts that a classification in a police regulation is arbitrary or indiscreet has the burden of proof that it does not rest on any reasonable basis. (*Bode* v. *Barrett*, 412 Ill. 204, 227; *Eastman* v. *Yellow Cab Co.*, 173 F. 2d 874, 881.) In this the defendant has failed.

This classification is reasonable and is based on substantial differences which have a rational relation to the subject matter. This difference is inherent in the two classes of vehicles—bearing in mind the expressed purpose of the regulation, namely, those vehicles required to have splash guards and those whose construction offers ample protection. Vehicles designed to carry not more than seven passengers, commonly called pleasure cars, are constructed so that no splash guards are necessary. While no evidence was offered on the subject the construction of pleasure cars is quite universally known. Judges are not supposed to know less than the average persons. We take judicial notice of the difference betwen vehicles of the first and those of the second division so far as the need for splash guards is concerned.

Similar considerations justify special treatment of trucks "in transit," (hereinabove described,) which are being transported from the factory to the dealer usually with a temporary in-transit permit rather than a regular license. Clearly, it is not an unreasonable classification to permit the installation of temporary splash guards for the purpose of this single trip.

In *Hansen* v. *Raleigh*, 391 Ill. 536, 544, we said that the test of equal protection of the laws is whether the legislation in question operates equally on all persons in the class to which it applies and not whether that class is treated the same as another class. Nothing in the statute before us would indicate that all vehicles in the exempted classes of "vehicles whose construction does not require such splash guards" and "motor vehicles in transit" will not be treated the same. The legislation operates equally on all vehicles within each of these classifications.

Plaintiff in error relies principally on *Consumers Co.* v. *City of Chicago*, 298 Ill. 339, in support of his contention that the "Splash Guard Act" contains an unlawful classification. An examination of that case shows that it is to be distinguished and is not determinative of the issue before us in the legislation now under review. The court there considered a 1916 ordinance of the city of Chicago requiring "motor vehicles designed for carrying freight and merchandise of 1,500 lbs. capacity or more" to be equipped with front fenders in such a manner and design as to prevent injury to pedestrians. This court held that ordinance unconstitutional for two reasons; first, there was no known standard, nor any provided, for determining the capacity of motor trucks and, second, the classification applied only to some portion of the 13,000 freight-carrying trucks and not to the 60,000 passenger cars in use in Chicago. In regard to the latter ground the court said: "A large mass of evidence of a technical or scientific nature was heard on that subject, from which it appeared that the danger of collision with pedestrians and the front end of passenger cars is at least as great as in the case of trucks." The court determined that the classification was not based upon a substantial difference; that there was no characteristic difference, so far as the object sought to be accomplished was concerned, between trucks with a capacity of 1500 lbs. or more and the smaller motor trucks and passenger cars and the various types of special motor vehicles. We find no similarity between the ordinance in question in the *Consumers Co.* case and the statute under consideration here.

The challenged act is a proper exercise of the police power of the State and is free from any unconstitutional taint.

The judgment of the county court of St. Clair County is affirmed.

Judgment affirmed.

APPENDIX V.

1955 Illinois Mudguard Act (Ill. Rev. Stat. 1955, Chapter 95½, Par. 218 (b), p. 266)

It is unlawful for any person to operate any new motor vehicle of the second division which is purchased on and after September 1, 1955, or any motor vehicle of the second division the splash guards of which have been replaced on and after September 1, 1955, which replacement shall be necessary when present splash guards are unable to prevent the splashing of mud or water upon the windshield of other motor vehicles, upon the highways of this State outside the corporate limits of a city, village or incorporated town, unless such vehicle is equipped with rear fender splash guards which shall comply with the specifications as hereinafter provided and such splash guards shall be so attached as to prevent the splashing of mud or water upon the windshield of other motor vehicles; provided, that on and after January 1, 1957, this amendatory Act of 1955 shall apply to all motor vehicles of the second division.

The rear fender splash guards shall contour the wheel in such manner that the relationship of the inside surface of any such splash guard to the tread surface of the tire or wheel shall be relatively parallel, both laterally and across the wheel, at least throughout the top 90 degrees of the rear 180 degrees of the wheel surface and the downward extension of the curved surface shall extend to a length which shall end not more than ten inches from the ground.

Such splash guards shall be wide enough to cover the full trend [*sic*] or treads of the tires being protected and shall be installed close enough to the tread surface of the tire or wheel as to control the side-throw or wash of the bulk of the thrown road surface material and keep such bulk within a tangent not to exceed 15 degrees measured from a base line formed by the top height of the wheel.

Such splash guards may be constructed of a flexible material, but shall be attached in such a manner that, regardless of movement, either in such splash guards or the vehicle, such splash guards will retain their general parallel relationship to the tread surface of the tire or wheel under all ordinary operating conditions.

This Sectoin shall not apply to motor vehicles whose construction does not require such splash guards, nor to motor vehicles in transit and capable only of using temporary splash guards approved by the Illinois State Highway Police.

APPENDIX VI.

The Rudolph Express Co., et al., Appellees, v. *Joseph D. Bibb, Director of Public Safety, et al.*, Appellants, 15 Ill. 2d 67.

Mr. Justice Schaefer delivered the opinion of the court:

In *People* v. *Warren*, 11 Ill. 2d. 420, we sustained the validity of section 121.02 of the Uniform Act Regulating Traffic on Highways, as amended in 1955. (Ill. Rev. Stat. 1955, chap. 95½, par. 218(b).) That section required that the rear wheels of motor vehicles of the second division—those designed and used for pulling or carrying freight or for carrying more than seven passengers—be equipped with contour splash guards while being operated on State highways outside of the limits of cities, villages and incorporated towns. In 1957 the section was again amended, principally by exempting certain vehicles from its requirements. The validity of the section as amended is challenged in this case.

The plaintiffs are common and contract motor carriers of general commodities, household goods and livestock in intrastate and interstate commerce. Their complaint sought to restrain the defendants, who are public officials, from enforcing the statute. Both parties moved for summary judgment. The plaintiffs' motion was supported by affidavits; the defendants' was not. The circuit court of Sangamon County held the exemption provisions of the amendment invalid, and held also that their invalidity rendered the entire section invalid. It entered a decree for the plaintiffs, and the defendants appeal directly to this court.

As it stood when the *Warren* case was before this court, section 121.02 required that the vehicles to which it applied be equipped with rear-fender splash guards that would contour the wheel in such manner that the relationship of the inside surface of the splash guard to the tread surface of the tire or wheel would be relatively parallel, both laterally and across the wheel, at least thoughout the top ninety degrees of the rear 180 degrees of the wheel's surface. The curved surface was required to extend downward to ten inches from the ground. The splash guards were required to be wide enough to cover the full tread or treads of the

tires and to be installed close enough to the tread surface of the tire or wheel to control the side-throw or wash of the bulk of the thrown material and keep it within a tangent not to exceed 15 degrees measured from a base line formed by the top height of the wheel. The splash guards could be constructed of flexible material, but there were required to be so attached that regardless of movement of the guards or the vehicles, the guards would retain their general parallel relationship to the tread surface of the tire under ordinary operating conditions.

Certain minor changes in the design of the required contour guard were made by the 1957 amendment. Their purpose appears to have been to make compliance easier in some particulars. In any event, they do not concern us here because the circuit court held that these changes did not affect the validity of the section and the plaintiffs did not cross-appeal from that ruling.

The main controversy centers upon the validity of the following paragraph which was added to section 121.02 by amendment in 1957: "This Section shall not apply to motor vehicles which do not have more than 2 axles and which are used primarily in agricultural pursuits, nor to pole trailers, dump trucks, 'ready-mix' type of cement trucks, nor to trucks used primarily for transporting grain which are dumped or unloaded by use of hoists or lifts, nor to vehicles operated principally off the highways of this state and used primarily in public construction or for purposes associated with or in aid of drilling, mining or otherwise severing of natural resources from their natural depository nor to motor vehicles operated principally within the corporate limits of a city, village or incorporated town or within a short radius thereof; provided, the Department of Public Safety may, in order to promote greater safety on the highways of this State and accomplish the purposes of this Section, adopt and promulgate reasonable rules and regulations establishing specifications or designs for splash guards, other than the contour type of splash guard hereinbefore specified, to be used on the vehicles mentioned in this paragraph while said vehicles are operated on the highways of this State. In adopting or promulgating any such rules or regulations, the Department of Public Safety shall consider, among other things, the type of vehicle, the design or construction of the vehicle, the purpose or purposes for

which the vehicle is used, the conditions or circumstances under which the vehicle operates and the distance the vehicle travels upon the highways of this State." Ill. Rev. Stat. 1957, chap. 95½, par. 218(b).

The principal question to be determined is whether this added paragraph sets up arbitrary, capricious and unreasonable classifications, in violation of section 22 of Article IV and section 14 of article II of our constitution, and the 14th amendment to the Federal constitution. Defendants maintain that the classification is reasonable and does not offend constitutional guarantees. Plaintiffs contend that the classification is discriminatory and is unrelated to the purpose of the statute, and therefore unconstitutional. No question is raised under the commerce clause of the Federal constitution.

Section 22 of article IV prohibits the General Assembly from passing any local or special law granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever. This provision, like the equal protection clause of the 14th amendment to the Federal constitution, is designed to prevent arbitrary discrimination. (*Hansen* v. *Raleigh*, 391 Ill. 356; *Michigan Millers Fire Ins. Co.* v. *McDonough*, 358 Ill. 575.) It does not prohibit legislative classification, but it does require that the classification rest on a reasonable basis and apply uniformly to all members of the class on which it operates. *City of Chicago* v. *Willett Co.*, 1 Ill. 2d 311; *Father Basil's Lodge, Inc.* v. *City of Chicago*, 393 Ill. 246.

The apparent legislative purpose of section 121.02 is to prevent or minimize the splashing of mud or water upon the windshields of other vehicles by vehicles of the second division while they are on State highways outside of incorporated areas. The paragraph in question unmistakably requires that one group of those vehicles be equipped with specifically described splash guards, and provides that a second large group need not be so equipped. In support of their contention that the classification is unreasonable, plaintiffs submitted to the trial court the affidavits of two experts who asserted that many of the enumerated vehicles would cause as much or more splash than those not enumerated. For example, it is asserted that the tires of a two-axle vehicle used primarily in agricultural pursuits will splash as much mud and water on a wet highway as those of a

similar vehicle used primarily in manufacturing or commercial pursuits. It is unnecessary to discuss the affidavits in detail, because the defendants conceded in their argument before this court that there is no difference in general between the splash propensities of the enumerated vehicles and those which are not enumerated.

The defendants argue, however, that the statute is to be read as requiring that all vehicles of the second division must be equipped with splash guards, although those enumerated can use a type of guard prescribed by the Department of Public Safety instead of the type prescribed by the statute. In other words, they contend that the only classification that is made relates to the type of splash guard required, and that the added paragraph should not be construed as exempting the enumerated vehicles from anti-splash measures. The statute does not support this contention. It provides that the Department "may" promulgate rules and regulations establishing specifications or designs for other types of splash guards. The language is permissive and the Department has apparently so construed it for it is not suggested that any rules or regulations relating to this subject have been adopted.

We read the statute, therefore, as providing that all vehicles of the second division, except those enumerated in the added paragraph, must be equipped with the guard prescribed by the statute. The enumerated vehicles may be required to have a different type of guard only if the Department sees fit to so require. We are unable to conclude that the classification thus prescribed is reasonable.

It is true that some of the enumerated vehicles fall readily into two categories suggested by the defendants: (1) the vehicle makes only occasional use of State highways and it would be impractical to require a permanent splash guard of the kind specified when no guards at all are required on the vehicle during most of its use, and (2) the normal operation of the vehicle would cause repeated damage to the specified splash guard. But if we are to assume that the legislature intended to exclude from compliance those vehicles which make only occasional use of State highways, it is difficult to see why the specified splash guard should be required on foreign vehicles passing through this State. (See *Navajo Freight Lines, Inc.* v. *Bibb*, 159 F.

Supp. 385.) And no basis has been suggested to support the distinction which is drawn between the vehicle "used primarily in public construction" and the vehicle used primarily in private construction. There are other disparities which need not be enumerated. In our opinion the trial court properly held the added paragraph invalid.

The next question is the effect of this determination on the other five paragraphs of section 121.02. There are no very reliable clews as to the legislative intent. The statute as enacted in 1935 contained a savings clause (Ill. Rev. Stat. 1957, chap. 95½, par. 239), but we are unable to draw from that fact any significant conclusion as to the intention of the General Assembly in enacting the 1957 amendment. That the General Assembly was not entirely satisfied with the section as enacted in 1955 is apparent from the adoption of the 1957 amendment. We cannot say, however, that that dissatisfaction indicated a purpose to repeal the original enactment if the added material was held invalid. The legislature intended in 1955 that the act should be operative without the invalid exemptions. There has been no clearly expressed intention to repeal the 1955 provision and we see no significant indications that would support a repeal by implication. (*People ex rel. Akin* v. *Butler Street Foundry and Iron Co.*, 201 Ill. 236, 258; *Frost* v. *Corporation Commission of Oklahoma*, 278 U. S. 515, 525-7, 73 L. ed. 483, 490; II Sutherland Statutory Construction, 2d ed. 1943, sec. 2412.) The exemption provisions of the 1957 amendment are clearly separable from those provisions of the amendment which relate to the design of the required guard.

The plaintiffs have asked what we reconsider the validity of a portion of the section which was sustained in *People* v. *Warren*, 11 Ill. 2d 420, and was not changed by the 1957 amendment. After examining the points and authorities cited by the plaintiffs, we see no reason to modify our decision in *People* v. *Warren*.

From what has been said it follows that the trial court erred in restraining the defendants from enforcing section 121.02. The decree is reversed and the cause is remanded for the entry of a decree in accordance with this opinion.

Reversed and remanded, with direction.

6

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1958

No. 94

JOSEPH D. BIBB, Director of the Department of Public Safety of the State of Illinois, and **WILLIAM H. MORRIS**, Superintendent of the Division of State Highway Police, Department of Public Safety of the State of Illinois,

Appellants,

vs.

NAVAJO FREIGHT LINES, INC., a New Mexico corporation, **RINGSBY TRUCK LINES, INC.**, a Nebraska corporation, **PRUCKA TRANSPORTATION, INC.**, a Nebraska corporation, **DENVER CHICAGO TRUCKING CO., INC.**, a Nebraska corporation, **WATSON BROS. TRANSPORTATION CO., INC.**, a Nebraska corporation, **PACIFIC INTERMOUNTAIN EXPRESS CO.**, a Nevada corporation, and **ARKANSAS BEST FREIGHT SYSTEM, INC.**, an Arkansas corporation,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION.

BRIEF FOR APPELLEES.

Certificate of Service Appended at Page 29

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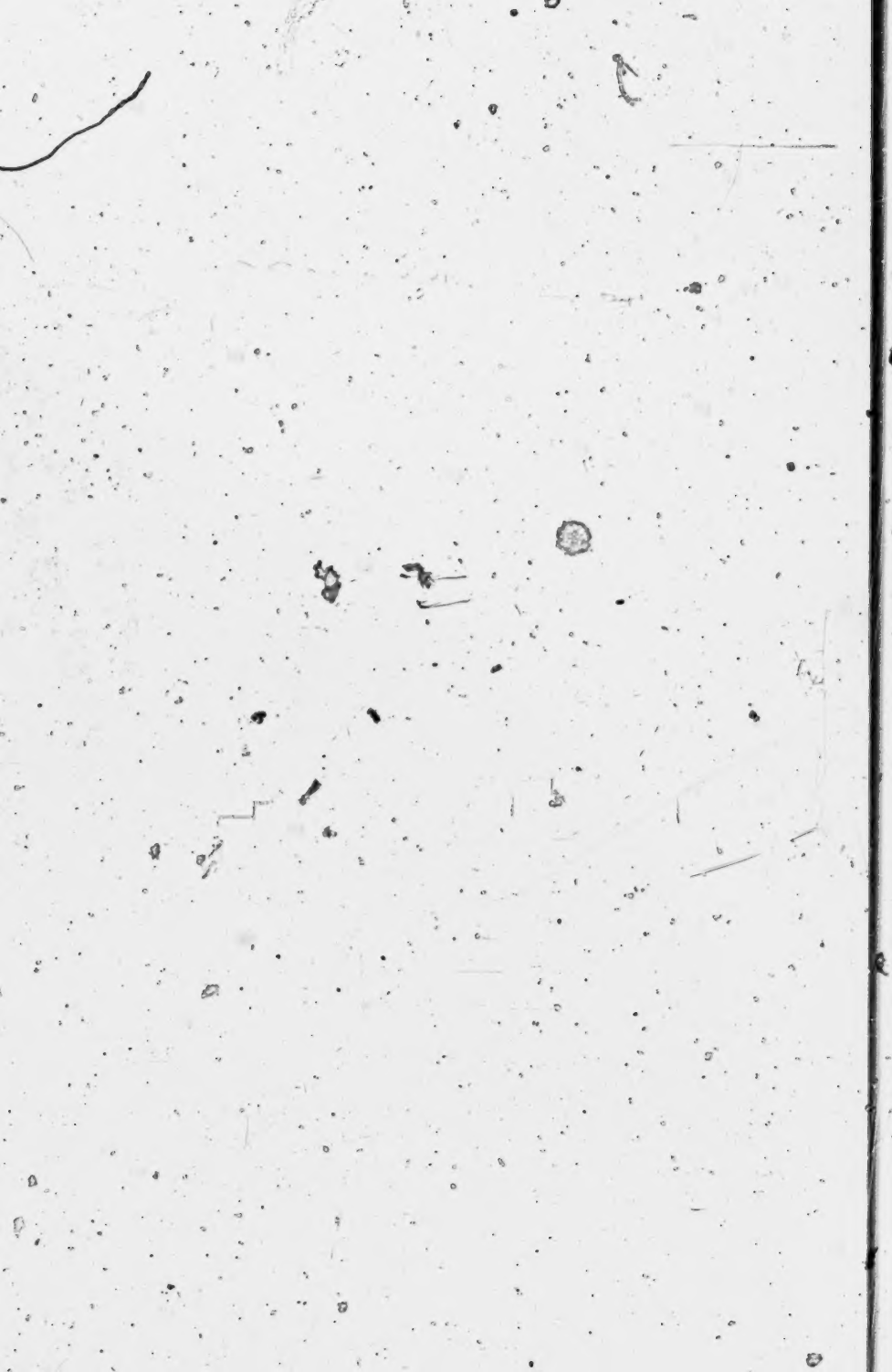

INDEX.

Authorities Cited.

Cases.

U. S. Constitution.

Statutes.

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Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION.

BRIEF FOR APPELLEES.

QUESTION PRESENTED.

The only question presented by this appeal is whether or not the Illinois statute which requires the so-called contour splash guard unduly and unreasonably burdens interstate commerce in violation of Article 1 Section 8 of the Constitution of the United States when applied to interstate motor carriers operating under certificates of public convenience and necessity issued by the Interstate Commerce Commission.

STATEMENT OF THE CASE.

Appellees as motor carriers of property in interstate commerce, certificated by the Interstate Commerce Commission, are required to provide reasonably continuous and adequate service throughout the area they are authorized to serve (Rec. 54, District Court Opinion, Rec. 305). Because the Illinois Contour Splash Guard Statute severely restricts their ability adequately to perform all service in interstate commerce as required by their certificates, they instituted this action to enjoin the State of Illinois from requiring them to substitute the "contour" type splash guard for the conventional straight mudguard which satisfied the requirements of the previous Illinois statutes and the statutes of all other states in which they operate.*

The District Court found on the basis of overwhelming

* The so-called conventional or straight splash guard which hangs perpendicular to the floor of the trailer is either permitted or required by every State except Illinois. The District Court stated: "We were led to believe at the time of the hearing, and still believe, that all of the States, except Illinois and perhaps Oregon and Idaho, require nothing more than the conventional or straight mudflap, none of which would comply with the Illinois Act." (Rec. 294.) It is the requirement of the Illinois Act that the splash guard "contour" the wheel in a certain prescribed way which makes the Illinois statutory requirements different from that of any other State. The statutes of all other States—even those using the word "fender" to describe the splash guard,—are satisfied by the so-called straight or conventional splash guard. The word "contour" makes the Illinois statute different from that of any other State and causes the splash guards of every other State to be illegal in Illinois. The straight or conventional splash guard is presently in use in both Idaho and Oregon (Rec. 115). A mere reading of the Idaho (Title 49, Sec. 840 Idaho Code 1957) and Oregon (Sec. 483.458 Oregon Revised Statute 1955) statutes demonstrates that a straight splash guard will satisfy their requirements, since the bottom of the trailer itself forms the cover over the wheel and neither Oregon nor Idaho specify that the required splash guard *contour* the wheel a certain distance from the tire.

and largely uncontroverted evidence that the Illinois statute which requires a "contour" type splash guard for the rear wheels of certain described trucks and trailers (Section 121.02 of the Uniform Act Regulating Traffic on Highways, being Section 218b of Chapter 95½ Ill. Rev. Stat.), severely burdens and even obstructs commerce between the States. There follows a brief summary of the facts which were the basis for the District Court's findings:

1. Interline operations by Interstate Motor Carriers will be disrupted.

In the course of serving the shipping public, appellees, as well as almost all other interstate carriers, provide both on-line and off-line service (Rec. 55-58, Opinion of the District Court, Rec. 293). The former term refers to a shipment which originates and terminates on the line of the same carrier. Off-line service describes a situation where a shipment originates with one carrier destined for a point which is not served by that carrier. In such cases the trailer of the originating carrier is physically transferred to the delivering carrier at some interchange point which both serve. Interlining (or the interchange of freight) is a vital part of Appellees' service to the shipping public (Finding of Fact Nos. 13, 14, 19, 22, Rec. 308-309). In connection with the transportation of certain commodities, the continuation of such practice is vital to the rendering of adequate service. Perishables carried in refrigerated trailers, explosives carried under seal, and various other items which it would be impossible or impracticable to transfer physically from one trailer to another must be interlined (District Court Opinion, Rec. 293). This practice may result in the trailer's moving to Arkansas or Illinois or any other state (District Court Opinion, Rec. 292, 293). It is impossible to segregate trailers according to the state or area that they may be required to travel into or through as a result of

interlining (District Court Opinion, Rec. 292, 293, Finding of Fact No. 19, Rec. 308).

Since the Illinois Contour Splash Guard Statute requires that all trailers entering Illinois be equipped with the contour splash guard, a carrier operating into Illinois will not only be required so to equip all of its vehicles, but will also have to make sure that all trailers which it accepts in interchange destined for points in Illinois or which must move through Illinois in interstate commerce to reach their destination are also equipped with the contour guard (District Court Opinion, Rec. 294, Finding of Fact Nos. 19, 20, Rec. 308). Appellees and other carriers operating into or through Illinois have no way of compelling other carriers, who do not serve Illinois directly, to install and maintain contour splash guards on their equipment (Finding of Fact No. 20, Rec. 308). Accordingly, if and when these other carriers who do not serve Illinois points refuse to equip their trailers with contour splash guards, the interchange service of all carriers will be disputed (Finding of Fact No. 20, Rec. 308). At no time have Appellants attempted to controvert this evidence or the findings of the District Court which are based on it.

2. Commerce between Illinois, Arkansas and any other state passing similar specific statutes will be completely obstructed.

On December 13, 1957 the Arkansas Public Service Commission entered an order which requires that trailers moving on Arkansas highways be equipped with a "perpendicular, flexible type mudguard hanging at a right angle from the trailer" (Rec. 110, District Court Opinion, Rec. 295). This language describes the so-called conventional or straight splash guard. Since the Illinois Splash Guard Act requires that the guard "contour" the wheel, it is

impossible for one piece of equipment to operate legally in both Illinois and Arkansas (Rec. 68-69, 106-107, District Court Opinion, Rec. 295-296, Finding of Fact Nos. 9 and 12, Rec. 307).

Appellants, in their brief, suggest on the basis of a single isolated excerpt from the record that vehicles stop at the State line to change splash guards (Appellants' Brief, p. 9). The District Court dealt carefully with this possibility and discounted it on the basis of evidence cited in its opinion (Opinion of District Court, Rec. 296-297). In many cases where the vehicle carries explosives or inflammables, it would be impossible to use the soldering tools necessary to install a contour splash guard (Rec. 72, 111, Finding of Fact No. 21, Rec. 309). Furthermore, since the very advantage of motor carrier transportation is its speed, the ability of motor carriers to continue to offer adequate service will be severely disrupted if carriers are to be compelled to weld equipment onto trailers when entering various States, and tear off this same equipment when entering other States (Rec. 72, Finding of Fact No. 21, Rec. 309).

3. Contour Splash Guards are not more effective than conventional equipment.

Considerable evidence was introduced to show that in fact the "contour" splash guard does not cope with the alleged spray problem any more effectively than does the conventional splash guard (Finding of Fact No. 28, Rec. 310). Numerous of plaintiffs' witnesses testified that they had carefully watched the contour splash guard in use and that it did not reduce spray any more effectively than the straight splash guard, if as well (Rec. 118, 126-127, 148-149). It was also established that because the contour splash guard must be placed close to the wheel—which is directly contradictory to the advice of the Society

of Automotive Engineers—it cannot possibly catch as much spray as does the straight splash guard (Rec. 126-127, 239-240). Based on this testimony and the diagram drawn for the Court by one of Appellees' witnesses (Rec. 239-240), the District Court concluded that "it was also conclusively shown that the contour mud flap possesses no advantages over the conventional or straight mud flap previously required in Illinois and presently required in most of the States. Counsel for defendants in oral argument substantially so conceded * * *" (District Court Opinion, Rec. 295, see also Finding of Fact No. 24, Rec. 309).

4. Contour Splash Guard will increase the hazards of Highway Travel throughout the United States.

In addition to the fact that the contour splash guards do not reduce spray any more effectively than does the conventional equipment, it was also proved that they introduce new dangers to highway traffic. Because of the difficulty in attaching them, the great amount of vibration they are subject to, and the fact that because of their position on the vehicle they receive many blows, the contour guards do not stay on very long and are very likely to fall off onto the highway and present a danger to other vehicles using roads not only in Illinois, but throughout the country. Companies attempting to use contour splash guards have experienced a great deal of difficulty keping them on their vehicles (Rec. 81-82, 127, 147, Finding of Fact Nos. 25 and 26, Rec. 309). Losing such contour guards on the highway surface introduces a new and unnecessary hazard to road travel all over the United States whether they are made of metal or some flexible material. Even the so-called flexible contour splash guard must have considerable rigidity in order to contour the tire as required and it must also be attached with some kind of metal which is likely to

come off when the splash guard comes off. The conventional straight mudguard on the other hand presents no similar danger since it is less likely to come off and, if it should it lies flat on the highway without presenting any comparable obstruction to oncoming traffic (Rec. 85, 98-99, 117, 149, Finding of Fact No. 26, Rec. 309).

In addition, the contour splash guard, because of its being mounted close to the wheel, does not permit sufficient cooling or heat dissipation of the brake drum, thus increasing the danger of brake fade from overheated brakes, with the result, as the District Court found, that "a new hazard will be added to interstate commerce all over the United States" (Rec. 119, 124-125, 128-135, 234-236, Finding of Fact Nos. 27 and 28, Rec. 309-310). Moreover, the close proximity of the splash guard to the tire increases the probability and danger of unusual tire trouble (Rec. 90-94). Because of these considerations, safety engineers for the appellees testified persuasively that they would not willingly use the contour splash guards required by the Illinois statutes, irrespective of the increased costs involved (Rec. 116-117, 125-126).

On the basis of such evidence the District Court made its ultimate finding of fact that the "Illinois Contour Splash Guard Act, while placing a substantial burden and obstruction upon the free flow of interstate commerce, does not contribute to safety in Illinois, and in fact introduces new dangers and hazards to highway travel in Illinois and throughout the United States not hitherto in existence" (Finding of Fact No. 30, Rec. 310).

5. All relevant evidence introduced was summarized in the District Court's Opinion and Findings of Fact.

As is evident, even from the foregoing brief summary, the District Court in its findings of fact and opinion gave exhaustive and comprehensive consideration to the entire subject matter of this case. Both parties were given every opportunity to introduce testimony with regard to the advantage or disadvantage of using a contour splash guard and its contribution to safety and burden upon commerce. All evidence presented was considered—and the opinion and findings of the Court did not overlook any relevant material presented at the trial. Yet, in spite of this, appellants suggest that certain evidence important to their case was not summarized or reflected in the Court's Opinion and Findings of Fact (Appellants' Brief, p. 8). They then proceed to draw from isolated pieces of testimony contained in the record and specifically rejected by the Court. For example, appellants state "A plastic contour splash guard when backed into an object * * * snaps back into position and is not damaged. Even when a plastic contour splash guard was subjected to ten times the vibration that you would get on the road, it was not damaged" (Appellants' Brief, p. 8). However, the District Court specifically found "that because the contour splash guard is difficult properly to affix to the trailer, and because in its position it is peculiarly liable to receive many blows and be subject to vibration, it is particularly liable to come off while the vehicle is in operation, presenting a hazard to oncoming traffic, and creating a difficult and costly maintenance problem for carriers" (Finding of Fact No. 25, Rec. 309).

Next, appellants assert that the District Court failed to consider evidence to the effect that "a contour splash guard, unlike a 'flat' or 'apron' type mudguard, will throw debris down instead of straight out" (Appellants' Brief,

p. 8). This assertion completely ignores the Court's finding "that the contour splash guard required in Illinois does not reduce the spray and splash caused by motor vehicles on highways any more effectively than the conventional or straight splash guard permitted in forty-five (45) States, if as well" (Finding of Fact No. 24, Rec. 309). In addition, appellants state "When one is driving behind a unit that has *inadequate* splash guards, mud and water is thrown all over the windshield of a following vehicle with momentary loss of vision. When one loses vision he drops the side of his car off the paved area of the road and many accidents are caused by trying to right the car from such rolling" (Appellants' Brief, p. 8) (Emphasis ours). This statement repeats the statement of one of appellants' witnesses whose testimony was obviously not accepted by the District Court in the light of overwhelming contradictory evidence. Furthermore, appellants' use of the word "inadequate" is, to say the least, misleading. At no time during the course of the trial did appellants seek to prove that the straight splash guard is inadequate. In fact, the Assistant Attorney General insisted throughout the trial of the case that evidence concerning the effectiveness of the straight splash guard was irrelevant and that any comparison of the relative merits of the contour splash guard as against the straight conventional splash guard was inappropriate (Rec. 264).

Again taking isolated statements out of the record, appellants set forth that contour splash guards keep stop and flicker lights and license plates from being obscured and permit a vehicle to follow within 20 or 30 feet of a unit so equipped (Appellants' Brief, p. 8). Appellants made no effort to show that back lights and license plates are obscured when a vehicle is equipped with a straight splash guard. Nor did they establish that it is any less safe to follow a vehicle equipped with a straight guard within

20 to 30 feet than it is one equipped with a contour guard. This is reflected in Finding No. 24 quoted above in which the Court specifically states that the contour splash guard is no more effective than the straight splash guard.

Another piece of evidence which appellants claim was overlooked by the District Court was testimony "that a mechanic who had no prior experience in installing such mudguards on a trailer could install such mudguards on a single axle vehicle in one hour and that it would take 'a little longer' to mount such mudguards on a two-axle vehicle" (Appellants' Brief, p. 9). Actually, the District Court did not fail to consider this contention because it specifically found "that it would be impossible in most cases, and impracticable in others, for plaintiffs to equip trailers obtained by interlining with the splash guard required by Illinois" (Finding of Fact No. 21, Rec. 309). Furthermore, the Court found "that by virtue of the conflicting requirements of Illinois and Arkansas, the free flow of commerce by motor carriers is obstructed because equipment legal in one State is illegal in the other" (Finding of Fact No. 12, see also Nos. 9, 10 and 16, Rec. 307-308). Furthermore, no evidence was adduced by appellants to show the type of tools necessary to change splash guards on the road before entering Illinois. Nor in fact was it explained how a driver could stop on the road in bad weather and undertake to change the vehicle's equipment.

Thus, not only have appellants been unable to find a relevant factual question with which the District Court failed to deal, but, in addition, it must be emphasized that the isolated statements in the record to which appellants have referred do not justify any change in the District Court's findings.

SUMMARY OF ARGUMENT.

The District Court correctly concluded that the appropriate test of the validity of the Illinois Statute under attack is whether the peculiar contribution, if any, which it makes to the safety of highway operations is sufficient to outweigh the burdens and obstructions which it imposes upon interstate commerce. In applying this test, the District Court was not bound by the State Legislature's judgment, but was obligated to exercise its own independent judgment with respect to the relative weights of the burdens imposed upon interstate commerce and the contribution to highway safety resulting from the application of the statute. In this connection, it was particularly pertinent to determine whether the purported safety objectives of the statute could not be equally or better achieved without the imposition of comparable burdens upon interstate transportation. The principles applicable to such a determination are so fundamentally different from those applicable in determining the validity of state legislation challenged under the due process clause of the Fourteenth Amendment, that the decisions of the Illinois Supreme Court sustaining the present statute against due process attacks are of no persuasive effect with respect to the questions presented in this litigation.

Decisions of this Court have made the correctness of these principles unmistakably clear in dealing with purported safety regulations applicable to other types of interstate transportation. There is no reason to suppose that the same principles are not equally applicable to interstate motor carrier operations conducted under certificates of public convenience and necessity issued by the Interstate Commerce Commission. The decisions of this

Court upon which appellants rely, sustaining statutes regulating motor carrier operations over the highways, are entirely consistent with these principles. Those decisions concern statutes which dealt with varying local conditions and which were amply justified, in terms of the tests above suggested, by the factual records in the particular cases. Because of these differences, both in the nature of the regulations involved and in the factual records supporting them, those decisions lend no support to appellants' position.

The District Court was equally correct in its application of the foregoing principles to the particular facts of this case. The record provides overwhelming support for the findings of the District Court with respect to the dubious contribution to safety made by the contour guard over and above that made by the conventional or straight guard, as well as the additional hazards it creates for highway traffic, the burdens which the statute imposes on the efficiency and economy of interstate motor carrier operations, and the obstructions which have already arisen and are likely to arise to interstate motor transportation on account of conflicting state regulations dealing in unnecessary detail with the exact structure and design of this type of equipment. The cumulative effect of these considerations amply justified the District Court in concluding that the Illinois statute attempts a type of regulation which the commerce clause requires must be provided, if at all, by a national authority capable of prescribing a single uniform rule.

ARGUMENT.

I.

The District Court correctly concluded that the appropriate test of the validity of the Illinois Splash Guard Act is whether the peculiar contribution, if any, to safety made by the contour splash guard required by the statute is sufficient to outweigh the burdens imposed upon interstate commerce.

The appellants throughout this proceeding have persistently sought to evade the fundamental issue tendered by the complaint and squarely resolved by the District Court, namely, whether the Illinois statute in requiring a splash guard of a particular design, different than that required by any other State, makes a unique contribution to highway safety sufficient to offset the burdens it imposes upon interstate motor carrier operations. The plaintiffs have asserted, and the District Court has found, that the statute imposes substantial additional costs of installation and maintenance, threatens to interfere with the interline operations of the plaintiffs by precluding or discouraging other carriers from sending trailers into Illinois, and also makes virtually impossible both single and interline operations between certain States, particularly Arkansas and Illinois, because of conflicting statutory requirements. The Court has also found that the equipment required by the statute makes virtually no contribution to the safety of highway operations beyond that accomplished by the customary splash guards and in fact introduces additional and substantial highway hazards which more than overbalance its dubious greater efficiency in cutting down back or side splash.

Instead of seriously contesting the validity of these find ings, the appellants have persistently taken refuge in wha this court has aptly called "the convenient apologetics o the police power." *Kansas City Southern Railway Com pany* v. *Kaw Valley Drainage District*, 230 U. S. 75, 7 They have even gone so far as to imply that the decision of the Supreme Court of Illinois in *People* v. *Warren*, 1 Ill. 2d 420 and *Rudolph Express Company* v. *Bibb*, 15 Il 2d 67, sustaining the Illinois statute against challenge under the due process clause, correctly states the principle which should be dispositive of this case. Examination o the opinion of the Illinois Supreme Court in the *Warre* case will show that the Court did indeed adopt the princi ples which appellants have invoked in this proceedin namely, that if the statutory requirement has some reason able relationship to the end which the Legislature right fully aims to achieve, it is immaterial whether other "mor simple and inexpensive" methods might equally or bette serve that end. We do not deny that this may be the appro priate test for disposing of a due process claim such a that presented to the Illinois Supreme Court. Howeve we submit that the District Court was clearly correct, an in accord with an unbroken line of decisions by this Cour in holding that it is not the appropriate test for disposin of the claim that the statute imposes an undue and unrea sonable burden upon interstate motor carrier operation such as those conducted by the present plaintiffs.

This Court has frequently had occasion to emphasize th difference in principles applicable in determining whethe a State statute is so unreasonable as to violate the du process clause, on the one hand, and in determining whethe it imposes an undue and unreasonable burden upon inte state commerce, on the other. With respect to the fir question, the presumption of constitutionality is so stron

as to be almost controlling; it can be rebutted, as this Court has said, only by showing that the means chosen are either arbitrary or discriminatory or have no reasonable relation to a proper legislative purpose. *Nebbia* v. *New York*, 291 U. S. 502, 537. With respect to the second question, the presumption of constitutionality cannot foreclose a searching judicial inquiry both as to the extent of the interference with interstate commerce and as to the question whether the legitimate objectives of the State could be adequately achieved without the imposition of comparable burdens upon, or obstructions to, interstate commerce. Compare *Minnesota* v. *Barber*, 136 U. S. 313 (1890); *Dean Milk Company* v. *City of Madison*, 340 U. S. 349 (1951).

The application of these principles is forcefully illustrated by the decision of this Court in *Southern Pacific Company* v. *Arizona*, 325 U. S. 761, holding invalid as an undue burden upon interstate commerce an Arizona statute making it unlawful to operate within the State railroad trains consisting of more than a specified number of cars. In a suit in the State court to recover statutory penalties, the railroad defended on the ground that the statute conflicted with the due process clause, the commerce clause and Federal legislation. The trial court gave judgment for the railroad, holding the statute invalid on all three of the grounds asserted. The Arizona Supreme Court reversed, largely on the grounds that the statute was enacted "for the purpose of the safety and protection of employees and of the people being transported over the railroads in our State" (*State of Arizona* v. *Southern Pacific Railroad Company*, 61 Ariz. 66, 70). The Court also relied on the proposition that "when a subject lies within the police power of the State, debatable questions as to reasonableness are not for the courts, but for the Legislature, which is entitled to form its own judgment, and its action within its range of discretion cannot be set

aside because compliance is burdensome." (61 Ariz. at 72). In reversing the decision of the Arizona Supreme Court solely on the ground that the statute offended against the commerce clause, this Court, speaking through Chief Justice Stone, carefully restated the controlling principles:

> "Hence the matters for ultimate determination here are the nature and *extent of the burden* which the state regulation of interstate trains, adopted as a safety measure, imposes *on interstate commerce*, and whether the relative weights of the state and national interests involved are such as to make inapplicable the rule, generally observed, that the free flow of interstate commerce and its freedom from local restraints in matters requiring uniformity of regulation are interests safeguarded by the commerce clause from state interference." (325 U. S. at 770-771.) (Emphasis ours.)

The decision of the Illinois Supreme Court in *People v. Warren, supra*, with respect to the validity of the Illinois statute under the due process clause, is certainly no more persuasive than was the decision of the Arizona Supreme Court with respect to the validity of the Arizona Train Limit Law. On the contrary, it may fairly be said that the decision of the Illinois Court is less persuasive, since unlike the Arizona Court, it was not even called upon to consider the validity of the Illinois statute under the commerce clause. However, the District Court in the present case, like the trial court in the *Arizona* case, has made detailed findings of fact, based upon an elaborate record, demonstrating that the contribution of the challenged statute to safety is negligible, and greatly overbalanced by other hazards which it creates and by the burdens which it imposes upon the economy and efficiency

of interstate operations. These findings provide as sound a factual basis for the application of the governing principles stated by Chief Justice Stone, as this Court found in the record of the *Southern Pacific* case.

It is also noteworthy that this Court in the *Southern Pacific* case explicitly recognized that Congress could have prescribed a uniform rule with respect to permissible train lengths with the effect of superseding state laws. Nevertheless, this Court held that the commerce clause alone, in the absence of any controlling Federal statute, had the effect of invalidating the statute. On this point too, Chief Justice Stone's comment is equally applicable here:

> "For 100 years it has been accepted constitutional doctrine that the commerce clause without the aid of Congressional legislation thus affords some protection from, state legislation inimical to the national commerce and that in such case, where Congress has not acted, this Court, and not the state legislature, is under the commerce clause the final arbiter of the competing demands of state and national interests." (325 U. S. at 769.)

Appellants contend that the general principles enunciated and applied in the *Southern Pacific* case have no application here because that was a railroad case while this concerns the use of state highways. In support of this proposition, they rely upon the decisions of this Court in *South Carolina Highway Department* v. *Barnwell Bros.*, 303 U. S. 161, *Maurer* v. *Hamilton*, 309 U. S. 598, and *Sproles* v. *Binford*, 286 U. S. 374. From these cases appellants would apparently extract the principle that, where state statutes purporting to promote safety in the use of the highways are concerned, the courts have no independent responsi-

bilities for determining the extent to which safety is in fact enhanced, as compared with the extent to which interstate commerce is impeded, and particularly whether the same safety objectives could not be equally or better achieved without imposing comparable burdens on interstate commerce. A moment's reflection will demonstrate the unsoundness of this proposition. If adopted it would leave each State free to prescribe the exact type of motor vehicle equipment favored by that particular state, even though many other types in actual operation in interstate commerce were equally suitable from the standpoint of safety and perhaps more desirable from the standpoint of economy and efficiency. Thus, interstate commerce by motor carrier would become virtually impossible unless the states could agree on a single type of equipment, or the Federal government stepped in to provide a single uniform rule.

Furthermore, closer examination of the very cases relied upon by the appellants will establish the unsoundness of their position. Thus, the opinion of Mr. Justice Stone in the *Barnwell* case emphasizes throughout the special relationship between the size and weight of motor vehicles and the construction and upkeep of the roads themselves. Even with regard to this particular type of regulation, Mr. Justice Stone did not foreclose judicial scrutiny into the reasonableness of the legislation and its bona fide connection with the preservation and use of the highways. Rather he indicated that the legislative judgment was entitled only to the presumption of validity and that this presumption could be upset by showing that facts judicially known or established in the record demonstrated the unreasonableness of the legislative judgment. As Mr. Justice Stone's opinion also indicates, the record in the *Barnwell* case itself provided "adequate support" for the legislative judgment (303 U. S. at 195). Included in that record was the

report of a special commission appointed to investigate motor transportation in the state, and the report of the state engineer who had constructed the concrete highways of the state, both indicating the need for size and weight limitations at least as rigorous as those prescribed. Needless to say, there is no comparable objective and disinterested evidence in the record of this case, or in the history of this legislation, indicating the need for, or appropriateness of, contour splash guards, either to preserve the highways of Illinois, or to enhance the safety of their use. On the contrary, the District Court specifically found that the Act did not contribute to safety, and in fact introduced new hazards to highway travel throughout the United States.

Turning next to the *Maurer* case, it is significant that the Attorney General's own quotation from that opinion contains the following sentence.

> "The *present record* lays a firm foundation for the exercise of State regulatory powers, unless the State has been deprived of that power by Congressional action authorizing the Commission to substitute its judgment for that of the state legislature as to the need and propriety of the state regulation" (309 U. S. at 603; Appellants' Brief, p. 11). (Emphasis ours.)

This reference to "[t]he present record" makes it clear that no unequivocal abdication by the Federal Courts of their duty to protect the free flow of interstate commerce from undue burdens and obstructions was intended. In *Maurer*, as in *Barnwell*, considerable affirmative evidence was in fact introduced to show Pennsylvania's need for the statute under attack, as indicated by this further statement of the Court:

> "* * * [t]here was extensive evidence tending to show that the transportation by appellants over the state highways of cars placed above the cab of the trans-

porting vehicle is unsafe to the driver and to the public, the trial court found that the location of motor vehicles over the cab of the carrier rendered its operation dangerous on the curves and grades of the Pennsylvania highways" (309 U. S. at 600-601).

Mr. Justice Stone then summarized additional findings of fact before concluding that, because of the local need for the legislation, the slight burden placed upon interstate commerce was neither undue nor unreasonable.

Similarly in *Sproles* v. *Binford*, this Court gave considerable attention to the comprehensive findings of the District Court establishing "according to the special requirements of local conditions" (286 U. S. at 390), the need for, and reasonableness of, the particular size and weight limitations involved, before concluding as a matter of law that the burden on commerce was neither undue nor unreasonable. Here, too, the Court was dealing with size and weight limitations which are peculiarly related to the particular characteristic of highways in each state such as widths, texture, curves, bridges, overpasses and the like—and, which therefore, as Chief Justice Hughes specifically stated, "fall within the established principle that in matters admitting of diversity of treatment, according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act." As this record amply demonstrates, there are no comparable peculiar local characteristics of highway or traffic conditions which would justify Illinois in prescribing a different type of splash guard than that accepted as adequate in all the other states of the Union. Finally, it should be noted that Chief Justice Hughes added to his previous statement of general principle the following significant qualification, "As this principle maintains essential local authority to meet local needs, it follows that one state cannot establish standards

which would derogate from the equal power of other states to make regulations of their own" (286 U. S. at 390). This qualification creates no difficulties as far as size and weight limitations are concerned, since each state can indeed prescribe its own standards and interstate commerce can proceed uninterruptedly so long as it comply with the strictest standard applicable in any of the states through which it passes. However, the same cannot be said of the present case where the prescription of a particular type of equipment is necessarily exclusive of other types and thus invites the kind of irreconcilable conflict between different states in which the present plaintiffs are now involved.

We submit, therefore, that there is no justification for the suggestion that the general principles announced in *Southern Pacific* v. *Arizona, supra,* are not applicable to interstate motor carrier operations as well as to interstate railroad operations, and no reason to doubt that the District Court applied the appropriate test in determining the validity of the Illinois Splash Guard Statute.

II.

The District Court correctly applied the appropriate test in determining, on the present record, that the Illinois Splash Guard Law is invalid as applied to interstate motor carrier operations because it imposes burdens and obstructions upon interstate commerce far out of proportion to its dubious contribution to safety on the highways.

As must be evident simply from reading the opinion and findings of fact of the District Court, once its choice of governing principle is accepted, there can hardly be any serious question regarding the correctness of its decision on the particular facts of this case. As already indicated

in our Statement of the Case, the Attorney General, by referring to some isolated bits of evidence which he asserts are not adequately reflected in the Court's findings or opinion, does make a rather half-hearted attempt to cast doubt on the correctness of the finding that the "contour splash guard required in Illinois does not reduce the spray and splash caused by motor vehicles on highways any more effectively than the conventional or straight splash guard" (Rec. 309). For example, the Attorney General now asserts that "The defendants' evidence summarized in the Statement of the Case, *ante*, is that a contour splash guard, unlike a 'flat' or 'apron' type will throw debris down instead of straight out (Rec. 201, 222), and will thus prevent its being hurled into faces of drivers passing the vehicle equipped with contour splash guards" (Appellants' Brief, 16). Examination of the pages of the record to which the Attorney General refers will reveal that the witnesses then under examination did not themselves conclude, nor provide any factual basis, in terms of actual observation or otherwise, for the Attorney General's conclusion, that a straight mud guard would not have substantially the same effect upon side spray or splash as the contour guard. Furthermore, several other witnesses testified on the basis of comparative observations that they could find no difference in actual effect upon side spray as between the contour guards and the straight or conventional guards (Rec. 118, 126-127, 148-149). Thus, even fully accepting the testimony of defendants' witnesses at face value, the District Court was justified in finding that the "contour splash guard * * * does not reduce the spray and splash caused by motor vehicles on highways any more effectively than the conventional or straight splash guard."

In view of this conclusion with respect to the merits of the greater safety claims asserted on behalf of the contour guard, the District Court would have been warranted

in holding the statute invalid solely on the ground that it arbitrarily imposed substantial additional costs of operation on interstate motor carriers. Although witnesses for the appellants sought to minimize these costs, the District Court found that each of the plaintiffs would be required to lay out for the original purchase of equipment alone substantial sums ranging from $4,500 to $45,000, plus additional costs of installation, maintenance and replacement (Rec. 292). These figures themselves would be sufficient to establish the impairment of the "efficiency and economy" of motor carrier operations which, in the absence of any added safety factor, would justify the conclusion of undue burden upon interstate commerce. Compare *Southern Pacific Company* v. *Arizona*, 325 U. S. at 781-782. However, witnesses for the plaintiffs made it clear that it was not merely these additional costs of operation to which they were objecting, but also the inherent unsoundness, from the point of view of both safety and efficiency, of the type of equipment with which the Illinois Statute would saddle them. This was demonstrated by the deleterious effects upon brakes and tires which the contour guards would have (Rec. 119, 124-125, 128-135, 234-236), as well as the difficulties involved in keeping them from being damaged or dislodged in normal trucking operations (Rec. 81-82, 127, 147, 309). These considerations were properly summarized in the District Court's finding that the contour guard "introduces new dangers and hazards to highway travel in Illinois and throughout the United States" and provided additional grounds for the conclusion that the statute unduly burdens interstate commerce.

Finally, the District Court gave appropriate weight to the dangers of conflicting state regulations, already illustrated by the impasse between Arkansas and Illinois, which would create artificial barriers to interstate motor carrier operations and to some extent completely obstruct such

operations. In this connection, the Court recognized th pertinency of the national interest in the plaintiffs' abilit to provide continuous and adequate service as require by their certificates of convenience and necessity issue by the Interstate Commerce Commission, just as this Cour in *Southern Pacific Company* v. *Arizona, supra,* recognize that the enforcement of the Arizona Train Limit Law woul interpose a "substantial obstruction to the national polic proclaimed by Congress to promote adequate, economica and efficient railway transportation service" (325 U. S. a 773). Congress has, of course, proclaimed the same polic with respect to motor carrier operations in interstate com merce (Act of September 18, 1940, c. 722, Title I, § 1, 5 Stat. 899, 49 U. S. C. A., c. 1, n. 1, Supp. 1958), and ha taken many steps to effectuate it. Compare *Castle* v *Hayes Freight Lines,* 348 U. S. 61. These considerations too, lend additional support to the conclusion that th Illinois statute unduly burdens interstate commerce.

The foregoing considerations may also be summarize in the proposition often applied by this Court that th state statute invades those phases of national commerc with respect to which the commerce clause itself require that the regulation, if any, must be by a national authorit capable of prescribing a single uniform rule. The decision of this Court demonstrate that the application of this prin ciple of required uniformity cannot be defined in abstrac terms, but must be determined by the effects of the par ticular state regulation upon the particular type of com merce involved. In the *Southern Pacific* case, it was th "necessity of breaking up and reassembling long trains a the nearest terminal points before entering and after leav ing the regulated state", in order to conform with variou state laws, which was found to impose a "serious imped ment to the free flow of commerce" and to suggest "th practical necessity that such regulation, if any, must b

prescribed by a single body having a nationwide authority" (325 U. S. at 775). In *Kelly* v. *the State of Washington, ex rel. Foss and Company*, 302 U. S. 1, the subject matter of state regulation involved was the inspection of the hulls and machinery of tugs whose principal business consisted of moving in and about the harbors of the state, vessels largely engaged in interstate commerce. This Court held that such inspection concerns "* * * a field in which the state law could operate without coming into conflict with present federal laws" and also was not "a subject which necessarily and in all aspects requires uniformity of regulation and as to which the state cannot act at all, although Congress has not acted" (302 U. S. at 15). Then Chief Justice Hughes went on to explain further the practical application of the principle of uniformity in such a situation, saying:

> "A vessel which is actually unsafe and unseaworthy in the primary and commonly understood sense is not within the protection of that principle. The State may treat it as it may treat a diseased animal or unwholesome food. In such a matter, the State may protect its people without waiting for Federal action providing the state action does not come into conflict with Federal rules. If, however, the State goes further and attempts to impose particular standards as to structure, design, equipment and operation which in the judgment of its authorities may be desirable but pass beyond what is plainly essential to safety and seaworthiness, the State will encounter the principle that such requirements, if imposed at all, must be through the action of Congress, which can establish a uniform rule. Whether the State in a particular matter goes too far must be left to be determined when the precise question arises" (302 U. S. at 15).

The language of Chief Justice Hughes is equally apt in explaining the principle of uniformity as applied to the matter of splash guards for interstate motor carriers.

When a state undertakes, as Illinois has done, to prescrib the exact design and structure of such equipment, it "wi encounter the principle that such requirements, if impose at all, must be through the action of Congress, which ca establish a uniform rule". Otherwise the kind of impass which has arisen between Arkansas and Illinois may b expected to occur on an ever increasing scale, for there i no reason to suppose that all states will agree on the exac structure or design of splash guards which will most effec tively serve the purposes. The effect of such conflic among state laws will be just as devastating to the econom and efficiency of interstate motor carrier operations as wa the effect upon the economy and efficiency of interstate ra operations envisaged by Chief Justice Stone from varyin train limit laws.

Furthermore, the applicability of the general principl of uniformity to motor carrier operations, as well as ra and water transportation, in determining the validity o state regulation under the commerce clause has alread been fully accepted by this Court. In *Morgan* v. *Virginia* 328 U. S. 373 (1946), this Court held invalid as applie to a passenger motor vehicle operating in interstate com merce a state statute requiring all motor carriers operat ing within the state to separate without discrimination th white and colored passengers in their busses, so that con tiguous seats would not be occupied by persons of differen races at the same time. Speaking for the Court, Mr. Jus tice Reed again reformulated the controlling principle a follows:

> "The precise degree of a permissible restriction o state power cannot be fixed generally or indeed no even for one kind of state legislation, such as taxatio or health or safety. There is a recognized abstrac principle, however, that may be taken as a postulat for testing whether particular state legislation in th absence of action by Congress is beyond the Stat

power. This is that the state legislation is invalid if it unduly burdens that commerce in matters where uniformity is necessary—necessary in the constitutional sense of useful in accomplishing a permitted purpose. Where uniformity is essential for the functioning of commerce, a state may not interpose its local regulation. Too true it is that the principle lacks in precision. Although the quality of such a principle is abstract, its application to the facts of a situation created by the attempted enforcement of a statute brings about a specific determination as to whether or not the statute in question is a burden on commerce. Within the broad limits of the principle, the cases turn on their own facts" (328 U. S. at 377-378).

It is also significant that Mr. Justice Reed thought it appropriate to add: "Appellants' argument, properly we think, includes facts bearing on interstate motor transportation beyond those immediately involved under the Virginia statutory regulations. To appreciate the weight of the burden of the Virginia statute, related statutes of other states are important to show whether there are cumulative effects which may make local regulation impracticable." These cumulative effects to which Mr. Justice Reed referred could only have involved the embarrassment and delays attendant upon the seating and reseating of passengers in accordance with the varying degrees to which segregation on racial grounds was required, permitted or forbidden by different state statutes. If such interference with the efficiency of interstate passenger transportation by motor carriers was sufficient to invalidate state passenger segregation laws as unduly burdening interstate commerce, then surely the deleterious effects demonstrated in this record upon the safety, economy and efficiency of interstate freight transportation by motor carriers, to say nothing of the complete obstruction of certain aspects of such transportation, are more than sufficient to invalidate the Illinois Splash Guard Act under attack.

Conclusion.

Because the District Court correctly applied to the particular facts of this case the appropriate principles governing the determination of the validity of a State statute challenged as invalid under the commerce clause, its decision should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, David Axelrod, one of counsel for appellees herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on or before the 17th day of February, 1959, I served copies of the foregoing Brief for Appellees on Appellants, as follows:

By mailing five copies of said Motion to Affirm to

Latham Castle,
Attorney General of the State of Illinois,
160 North LaSalle Street, Suite 900,
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in a duly addressed envelope, postage prepaid.

DAVID AXELROD,
One of the Counsel for Appellants.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1958

No. 94

JOSEPH D. BIBB, Director of the Department of Public Safety of the State of Illinois, and WILLIAM H. MORRIS, Superintendent of the Division of State Highway Police, Department of Public Safety of the State of Illinois,

Appellants,

vs.

NAVAJO FREIGHT LINES, INC., a New Mexico corporation, RINGSBY TRUCK LINES, INC., a Nebraska corporation, PRUCKA TRANSPORTATION, INC., a Nebraska corporation, DENVER CHICAGO TRUCKING CO., INC., a Nebraska corporation, WATSON BROS. TRANSPORTATION CO., INC., a Nebraska corporation, PACIFIC INTERMOUNTAIN EXPRESS CO., a Nevada corporation, ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas corporation, and SCHERER FREIGHT LINES, INC., an Illinois corporation,

Appellees.

(APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION.)

REPLY BRIEF FOR APPELLANTS.

Certificate of Service Appended at Page 7.

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INDEX.

Cases and Statutes Cited.

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Appellants,

vs.

NAVAJO FREIGHT LINES, INC., a New Mexico corporation, RINGSBY TRUCK LINES, INC., a Nebraska corporation, PRUCKA TRANSPORTATION, INC., a Nebraska corporation, DENVER CHICAGO TRUCKING CO., INC., a Nebraska corporation, WATSON BROS. TRANSPORTATION CO., INC., a Nebraska corporation, PACIFIC INTERMOUNTAIN EXPRESS CO., a Nevada corporation, ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas corporation, and SCHERER FREIGHT LINES, INC., an Illinois corporation,

Appellees.

(APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION.)

REPLY BRIEF FOR APPELLANTS.

I.

Appellees do not overcome the effect of the undisputed facts stated and the authorities cited in Appellants' original brief. For the reasons set forth in that brief the judgment appealed from should be reversed.

Appellees have cited no decision of this Court invalidating a State statute or other regulation governing the equipment of trucks or motor vehicles that, although moving

in interstate commerce, travel upon a system of highways built and maintained by the State.

Appellees place chief reliance upon this Court's decision in *Southern Pac. Co.* v. *Arizona,* 325 U. S. 761, in which this Court held invalid a State law limiting the number of cars upon trains traversing that State. That case did not involve State highways. Moreover in that case the Interstate Commerce Commission had entered an order, not controlling the case because it was entered after the facts there involved had arisen but nevertheless very persuasive in its teaching, suspending the action of State statutes limiting the length of cars for the duration of the war. There was also a showing that decreasing the length of trains meant increasing the number thereof, with a consequent increase in the risk of accidents.

If cases involving the regulation of railroad trains are to be consulted, far more closely analogous to the instant case than the *Southern Pac. Co.* case is *Terminal Railroad Assn.* v. *Brotherhood of Railroad Trainmen,* 318 U. S. 1.

In the *Terminal Railroad* case this Court sustained an order of the Illinois Commerce Commission requiring the Terminal Railroad to couple cabooses onto trains traversing railroad bridges spanning the Mississippi River between Illinois and Missouri. The Court held the regulation valid even though the Court noted "that there do not exist, and that it is not reasonably practicable to install, facilities for taking on and dropping off cabooses at the point where the trains cross the state lines; and that the practical consequence of the order is that if cabooses are to be used in Illinois on runs of the second sort" (that is, on runs from Illinois into Missouri across the Mississippi) "they must also be used at least as far as the nearest switching point in Missouri."

Continuing, the Court said at page 8:

> "As to both classes of runs, the effect of the order is in some measure to retard and increase the cost of movements in interstate commerce. This is not to say, however, that the order is necessarily invalid. In the absence of controlling federal legislation this Court has sustained a wide variety of state regulations of railroad trains moving in interstate commerce having such effect. The governing principles were recently stated in *Parker* v. *Brown*, 317 U. S. 341, 361-363."

The *Terminal Railroad* case is incisively similar to the instant case in that the coupling of cabooses on interstate trains, like the affixing of contour mudguards in the instant case, entailed a burden upon interstate commerce and in effect would require as to some trains the transportation of cabooses into Missouri, just as with respect to the interstate traffic involved in the instant case, appellees will in many instances find it necessary or more convenient to transport contour mudguards from other states in Illinois and from Illinois into other states than to affix such mudguards at State boundaries.

It is to be noted that the *Terminal Railroad* case was cited with approval in the *Southern Pacific* case (325 U. S. at page 779).

For the Court's immediate convenience, we reprint the often quoted language of Mr. Justice Stone in *California* v. *Thompson*, 313 U. S. 109, at pages 113-114:

> "A state may license trainmen engaged in interstate commerce in order to insure their skill and fitness. *Smith* v. *Alabama*, 124 U. S. 465; *Nashville, C. & St. L. Ry. Co.* v. *Alabama*, 128 U. S. 96. It may define the size of crews manning interstate trains, *Chicago, R. I. & P. Ry. Co.* v. *Arkansas*, 218 U. S. 453; *Missouri Pacific R. Co.* v. *Norwood*, 283 U. S. 249, and prescribe regulations for payment of their wages. *Erie R. Co.* v. *Williams*, 233 U. S. 685. It may require interstate pas-

senger cars to be heated and guard posts to be placed on bridges of an interstate railroad. *New York, N. H. & H. R. Co.* v. *New York*, 165 U. S. 628. It may limit the speed of interstate trains within city limits. *Erb* v. *Morasch*, 177 U. S. 584. It may require an interstate railroad to eliminate grade crossings. *Erie R. Co.* v. *Public Utility Commissioners*, 254 U. S. 394, 409, 412. It may pass local quarantine laws applicable to merchandise moving in interstate commerce, as a means of protecting local health. *Morgan's S. S. Co.* v. *Louisiana*, 118 U. S. 455; *Compagnie Francaise* v. *Board of Health*, 186 U. S. 380. It may regulate and protect the safe and convenient use of its harbors and navigable waterways unless there is conflict with some act of Congress. *Willson* v. *Black Bird Creek Marsh Co.*, *supra*; see *Clyde Mallory Lines* v. *Alabama*, 296 U. S. 261, 267. It may regulate pilots and pilotage in its harbors, *Cooley* v. *Board of Port Wardens*, *supra*. Where, as here, Congress has not entered the field, a state may pass inspection laws and regulations, applicable to articles of interstate commerce, designed to safeguard the inhabitants of the state from fraud, provided only that the regulation neither discriminates against nor substantially obstructs the commerce. *Turner* v. *Maryland*, 107 U. S. 38; *Plumley* v. *Massachusetts*, 155 U. S. 461; *Petapsco Guano Co.* v. *North Carolina*, 171 U. S. 345, 357, 358; *Savage* v. *Jones*, 225 U. S. 501; see also *Minnesota Rate* Cases, 230 U. S. 352, 398-412 and cases cited; *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 185-191 and cases cited."

In *California* v. *Thompson*, cited above, this Court sustained a State act requiring the bonding of locally operating agents for the brokerage of interstate transportation over the public highways of the State.

Appellees deprecate the pronouncements of the Supreme Court of Illinois in *People* v. *Warren*, 11 Ill. 2d 420, and *Rudolph Express Co.* v. *Bibb*, 15 Ill. 2d 67, declaring the Illinois Contour Mudguard statute to be "reasonable" because those pronouncements were made in response to an

invocation of the due process clause rather than the commerce clause of the Federal Constitution.

To be sure, there are cases and contexts in which the criterion of "reasonableness" with respect to due process are not controlling when a state law is sought to be applied to interstate commerce. And of course decisions of a State's highest court are never binding upon this Court as to the federal constitutionality of state laws. But where measures calculated to preserve safety and life upon state highways are involved, the question of "reasonableness" is much the same in applications of the commerce clause as it is in applications of the due process clause.

It is most significant that appellees do not dispute and in effect concede the correctness of the decisions of the Supreme Court of Illinois in the Warren and Rudolph Express Company cases. With this virtual concession that the Supreme Court of Illinois correctly held the instant measure valid as against the claim that it was so unreasonable as to deny due process, appellees virtually give away their case under the commerce clause. Appellants at once rely upon and distinguish this Court's decision, cited and relied on by appellants in their original brief at page 17, in *Kelly v. Washington*, 302 U. S. 1. In that case, as we have shown at length in our original brief, this Court sustained a State regulation of the hulls and machinery of tugs traveling in interstate commerce.

Morgan v. *Virginia*, 328 U. S. 373, invalidated a provision requiring the segregation of white from colored passengers when busses moved from the District of Columbia into Virginia. No question of health, safety or the preservation of life was involved.

Appellees cite *Minnesota* v. *Barber*, 136 U. S. 313, and *Dean Milk Company* v. *Madison*, 340 U. S. 349, not as in

point upon the facts but as sustaining the general proposition that laws that discriminate against interstate commerce will be held invalid and that this Court may appraise the impact of such laws upon such commerce. Appellants do not challenge these generalities of constitutional jurisprudence. The *Dean Milk* case dealt with a discrimination against interstate milk and the *Barber* case dealt with a discrimination against imported meats. The present Illinois Act applies not only to foreign vehicles entering Illinois but to Illinois vehicles.

Appellees have not overcome the demonstration in appellants' original brief that the determination that public safety in Illinois will be enhanced by contour mudguards of the type required by the instant statute was within the ambit of legislative determination and does not unconstitutionally burden interstate commerce.

Conclusion.

For the reasons urged in appellants' original brief and in this brief, it is respectfully submitted that the judgment appealed from should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, Raymond S. Sarnow, one of counsel for appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on or before the 17th day of March, 1959, I served copies of the foregoing Reply Brief for Appellants as follows:

By mailing of five copies of said Reply Brief to

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